

CHIEF'S PREFACE

The Bureau of Investigation is one of the greatest assets available to the District Attorney. Without the hard work of our dedicated and loyal employees, the Bureau of Investigation would not have achieved the professional recognition we have throughout the law enforcement community. Bureau of Investigation personnel are expected to foster and maintain the highest standard of conduct, appearance, and professionalism while displaying honesty, trust, and integrity when interacting with the public and other criminal justice agencies.

The Mission of the Office of the District Attorney of Orange County is to enhance public safety and welfare and create a sense of security in the community through the vigorous enforcement of criminal and civil laws in a just, honest, efficient and ethical manner.

The Code of Professional Conduct and Responsibilities for Peace Officers developed by the California Peace Officers' Association and the Law Enforcement Code of Ethics are included for reference as part of this manual. Every investigator is expected to be familiar with and adhere to the principles of both. In any case, where a conflict exists between the Code of Professional Conduct and this manual, the manual will take precedent.

This manual was established to provide all sworn and non-sworn employees of this Bureau with a readily applicable, clear concept of the Bureau of Investigation Policies and Procedures. All employees shall read this manual, in its entirety, and remain familiar with the content. This will contribute to the overall success of our organization. This manual is not intended to specifically cover all of the many situations which constantly confront employees in the general discharge of their duties. Each employee is expected to use discretion, initiative, resourcefulness, and sound judgment while performing their duties.

This manual has been provided to you as a binder copy or via the Intranet and must be maintained with current, up to date information. All deletions and additions shall be updated as changes are made. Although this manual is available through the Intranet, all employees are responsible to review any revisions, as they are notified of any such changes. This manual is confidential in nature and all information contained herein is not to be divulged to those for whom it is not intended.

As Chief of the Bureau of Investigation, I want to thank each and every one of you for your hard work and dedication. I truly appreciate the important work you accomplish on a daily basis.

Paul M. Walters, Chief

Bureau of Investigation

LAW ENFORCEMENT CODE OF ETHICS

As a Law Enforcement Officer, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all men to liberty, equality and justice.

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

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

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

MISSION STATEMENT

The mission of the Office of the District Attorney of Orange County is to enhance public safety and welfare and create a sense of security in the community through the vigorous enforcement of criminal and civil laws in a just, honest, efficient and ethical manner.

OCDA Bureau of Investigation Policy Manual

Law Enforcement Policy

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Chapter 1 - Law Enforcement Role and Authority

Law Enforcement Authority

100.1 PURPOSE AND SCOPE

The purpose of this policy is to affirm the authority of the members of the Orange County District Attorney Bureau of Investigation to perform their functions based on established legal authority. This Bureau does not tolerate abuse of law enforcement authority.

100.2 PEACE OFFICER POWERS

Sworn members of this Bureau are authorized to exercise peace officer powers pursuant to applicable state law (Penal Code § 830.1 and Penal Code § 830.35).

100.2.1 JURISDICTION

While this Bureau recognizes the statutory power of peace officers to make arrests throughout the state, investigators are encouraged to use sound discretion in the enforcement of the law. On-duty arrests will not generally be made outside the jurisdiction of Orange County except in cases of hot or fresh pursuit, while following up on crimes committed within the County or while assisting another agency. On-duty investigators who discover criminal activity outside the jurisdiction of the County should, when circumstances permit, consider contacting the agency having primary jurisdiction before attempting an arrest.

When an investigator makes an out-of-county arrest pursuant to a warrant, the investigator shall inform the arrestee of the right to be taken before a magistrate in that county (Penal Code § 821; Penal Code § 822). The investigator shall ensure the Out of County Warrant Arrest form is completed and attached to the arrest report. The [Out of County Arrest form](#) can be found on the [DA Intranet](#), under Bureau Forms.

100.2.2 ARREST AUTHORITY INSIDE THE JURISDICTION OF ORANGE COUNTY

The arrest authority within the jurisdiction of the Orange County District Attorney includes (Penal Code § 830.1; Penal Code § 830.35; Penal Code § 836):

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

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- e. In compliance with an arrest warrant.

100.2.3 TIME OF MISDEMEANOR ARRESTS

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

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

100.3 INTERSTATE PEACE OFFICER POWERS

Peace officer powers may be extended to other states:

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

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

100.4 CONSTITUTIONAL REQUIREMENTS

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

Chief Executive Officer

101.1 PURPOSE AND SCOPE

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

101.1.1 CHIEF EXECUTIVE OFFICER REQUIREMENTS

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

Oath of Office

102.1 PURPOSE AND SCOPE

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

102.2 POLICY

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

102.3 OATH OF OFFICE

Upon employment, all sworn members shall be required to affirm the oath of office expressing commitment and intent to respect constitutional rights in discharging the duties of a law enforcement officer.

102.4 BUREAU OATH OF OFFICE

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

Policy Manual

103.1 PURPOSE AND SCOPE

The manual of the Orange County District Attorney Bureau of Investigation is hereby established and shall be referred to as the Policy Manual or the manual. The manual is a statement of the current policies, rules and guidelines of this Bureau. All members are to conform to the provisions of this manual.

All prior and existing manuals, orders and regulations that are in conflict with this manual are rescinded, except to the extent that portions of existing manuals, procedures, orders and other regulations that have not been included herein shall remain in effect, provided that they do not conflict with the provisions of this manual.

103.2 POLICY

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

103.2.1 DISCLAIMER

The provisions contained in the Policy Manual are not intended to create an employment contract nor any employment rights or entitlements. The policies contained within this manual are for the internal use of the Bureau of Investigation and shall not be construed to create a higher standard or duty of care for civil or criminal liability against the County, its officials or members. Violations of any provision of any policy contained within this manual shall only form the basis for Bureau administrative action, training or discipline. The Bureau of Investigation reserves the right to revise any policy content, in whole or in part, in accordance with Meyers-Milias-Brown Act (MMBA).

103.2.2 COMMAND STAFF

Staff shall consist of the Bureau Chief, Assistant Chief(s) and the Commanders. Command Staff shall review all recommendations regarding proposed changes to the manual at Staff meetings.

103.3 AUTHORITY

The Bureau Chief shall be considered the ultimate authority for the content and adoption of the provisions of this manual and shall ensure compliance with all applicable federal, state and local laws. The Bureau Chief or the authorized designee is authorized to issue memos, which shall modify those provisions of the manual to which they pertain. Bureau Directives shall remain in effect until such time as they may be permanently incorporated into the manual.

Policy Manual

103.3.1 ACCEPTABLE ABBREVIATIONS

The following abbreviations are acceptable substitutions in the manual and as footnotes. Footnotes are placed three spaces below the last line of text in the left-hand margin.

- Bureau Directives may be abbreviated as "BD."
- Policy Manual Sections may be abbreviated as "Section 106.X" or "§ 106.X."

103.3.2 DISTRIBUTION OF MANUAL

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

- Bureau Chief
- Assistant Chief(s)
- Commanders
- Professional Standards Supervising Investigator
- District Attorney
- Training Coordinator
- Human Resources

The Policy Manual is available on the internet (Lexipol.com) for access by all employees. It is also available via the Lexipol application, which can be installed on a Bureau-issued cell phone.

103.4 DEFINITIONS

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

Adult - Any person 18 years of age or older.

CCR - California Code of Regulations (Example: 15 CCR 1151).

CHP - The California Highway Patrol.

CFR - Code of Federal Regulations.

County - The County of Orange.

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

Bureau/OCDA - The Orange County District Attorney.

DMV - The Department of Motor Vehicles.

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Employee/Personnel - Any person employed by the Bureau.

Juvenile- Any person under the age of 18 years.

Manual - The Orange County District Attorney Bureau of Investigation Policy Manual.

May - Indicates a permissive, discretionary or conditional action.

Member - Any person employed or appointed by the Orange County District Attorney, including:

- Full- and part-time employees
- Sworn peace officers
- Non-sworn employees
- Volunteers

Investigator/Sworn - Those employees, regardless of rank, who are sworn peace officers of the Orange County District Attorney.

On-duty - A member's status during the period when he/she is actually engaged in the performance of his /her assigned duties.

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

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

Rank - The title of the classification held by an investigator.

Shall (or will) - Indicates a mandatory action.

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

Supervisor - A person in a position of authority that may include responsibility for hiring, transfer, suspension, promotion, discharge, assignment, reward or discipline of other Bureau members, directing the work of other members or having the authority to adjust grievances. The supervisory exercise of authority may not be merely routine or clerical in nature but requires the use of independent judgment.

USC - United States Code.

103.5 ISSUING THE POLICY MANUAL

An electronic version of the Policy Manual will be made available to all members on the Internet ([Lexipol](#)) for viewing and printing. No changes shall be made to the manual without authorization from the Bureau Chief or the authorized designee.

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Each member shall acknowledge that he/she has been provided access to, and has had the opportunity to review the Policy Manual and Interim Directives. Members shall seek clarification as needed from an appropriate supervisor for any provisions that they do not fully understand.

103.6 MANUAL ACCEPTANCE

As a condition of employment, all Bureau employees are required to read and obtain necessary clarification of the Bureau's policies. All Bureau employees are required to sign a statement of receipt acknowledging that they have received a copy, or have been provided access to the Policy Manual electronically and understand they are responsible to read and become familiar with its contents. A copy of the signed state of receipt will be maintained in each Bureau member's personnel file.

103.6.1 REVISIONS TO POLICIES

All Bureau employees are responsible for keeping abreast of all Policy Manual revisions. All changes to the Policy Manual will be emailed to all Bureau employees and can be accessed on [Lexipol's](#) website. The Professional Standards Division will forward revisions to the Policy Manual as needed to all personnel via electronic mail. Each employee shall acknowledge receipt of the updates/revisions /directives, etc. by checking the acknowledgement box on the bottom of Lexipol's notification, review the revisions and seek clarification as needed.

Each unit commander or supervisor will ensure that employees under their command are aware of any Policy Manual revisions. The electronic acknowledgements will automatically be sent to the Professional Standards Division.

All Bureau members suggesting revision of the contents of the Policy Manual shall forward their written suggestions to the Assistant Chief, who will consider the recommendations and forward them to the command staff as appropriate.

103.7 PERIODIC REVIEW OF THE POLICY MANUAL

The Bureau Chief will ensure that the Policy Manual is periodically reviewed and updated as necessary.

Chapter 2 - Organization and Administration

Organizational Structure and Responsibility

200.1 PURPOSE AND SCOPE

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

200.2 BUREAU DIVISIONS

The Bureau Chief is responsible for administering and managing the Orange County District Attorney Bureau of Investigations. There are four divisions in the Bureau of Investigation and they are as follows: (Refer to Organization Chart for areas of responsibility for each Division commander)

- Vertical Prosecution 1
- Vertical Prosecution 2
- Professional Standards Division
- Courts and Public Assistance Division

200.3 COMMAND PROTOCOL

200.3.1 SUCCESSION OF COMMAND

The Bureau Chief exercises command over all personnel in the Bureau.

Except when designated as above, the order of command authority in the absence or unavailability of the Bureau Chief is as follows:

- a. Bureau of Investigation Assistant Chief(s)
- b. Bureau of Investigation Commander(s)
- c. Bureau of Investigation Supervisor(s)

200.3.2 UNITY OF COMMAND

The principles of unity of command ensure efficient supervision and control within the Bureau of Investigations. Generally, each employee shall be accountable to one supervisor at any time for a given assignment or responsibility. Except where specifically delegated authority may exist by policy or special assignment (PSU, Range, etc.), any supervisor may temporarily direct any subordinate if an operational necessity exists.

200.3.3 ORDERS

Organizational Structure and Responsibility

Members shall respond to and make a good faith and reasonable effort to comply with the lawful order of superior officers and other proper authority.

200.3.4 CHAIN OF COMMAND

All Bureau members shall adhere to the chain of command established within the Bureau of Investigation. A Bureau member shall not, under any circumstances, follow the instructions of a Deputy District Attorney if such instructions violate any Bureau policy, regulation or directive, or is in fact an unlawful order. Bureau members shall immediately notify their supervisor if such circumstances arise.

Bureau Directives

201.1 PURPOSE AND SCOPE

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

201.1.1 DIRECTIVE PROTOCOL

Directives will be incorporated into the manual as required upon approval of Command Staff. Each year the directive(s) will modify existing policies or create a new policy as appropriate. Once the directive has been incorporated into the manual, it will become policy and the directive rescinded.

All existing directives have now been incorporated in the updated Policy Manual.

Directives issued after publication of the manual shall be numbered consecutively starting with the last two digits of the year, followed by the number "1", etc. For example, 19-1 would be the first directive for 2019.

201.2 RESPONSIBILITIES

201.2.1 COMMAND STAFF

Command Staff shall review and approve revisions of the Policy Manual, which will incorporate changes originally made by Bureau Directives.

201.2.2 BUREAU CHIEF

The Bureau Chief shall issue all Bureau Directives. Bureau Directives will be generated in the form of an OCDA memorandum.

Electronic versions of Bureau Directives will be stored along with the electronic version of this Policy Manual on the OCDA intranet. The Bureau Directives will be temporarily stored in this fashion until such time as they are incorporated into the policy manual.

201.3 ACCEPTANCE OF BUREAU DIRECTIVES

All employees are required to read and obtain any necessary clarification of all directives.

Once a directive has been sent out, it is the responsibility of every Bureau employee to log in to [Lexipol](#), read and acknowledge receipt of the new/revised policy. The online acknowledgement will be retained in Lexipol documenting each employee that has/has not read and acknowledged a policy.

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Bureau Directives

Each unit commander or supervisor will ensure that employees under their command are aware of any Policy Manual updates/revisions/directives, etc.

Emergency Management Plan

202.1 PURPOSE AND SCOPE

The County has prepared an Emergency Management Plan for use by all employees in the event of a major disaster or other emergency event. The plan provides for a strategic response by all employees and assigns specific responsibilities in the event that the plan is activated (Government Code § 8610).

202.2 ACTIVATING THE EMERGENCY PLAN

The Emergency Management Plan can be activated on the order of the official designated by local ordinance.

202.2.1 RECALL OF PERSONNEL

In the event that the Emergency Management Plan is activated, all employees of the Orange County District Attorney are subject to immediate recall. Employees may also be subject to recall during extraordinary circumstances as deemed necessary by the Bureau Chief or the authorized designee.

Failure to promptly respond to an order to report for duty may result in discipline.

202.3 LOCATION OF THE PLAN

The Emergency Management Plan is available from the Administration Facilities Manager. All supervisors should familiarize themselves with the Emergency Management Plan. The Administration Facilities Manager should ensure that Bureau personnel are familiar with the roles Bureau personnel will play when the plan is implemented.

Electronic Mail

204.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the proper use and application of the Bureau's electronic mail (e-mail) system by all employees. This policy will also address the proper steps an employee must take regarding work-related messages received on a personal e-mail account. E-mail is a communication tool available to employees to enhance efficiency in the performance of job duties and is to be used in accordance with generally accepted business practices and current law (e.g., California Public Records Act). Messages transmitted over the e-mail system must only be those that involve official business activities or contain information essential to employees for the accomplishment of business-related tasks and/or communication directly related to the business, administration, or practices of the County of Orange.

204.2 E-MAIL RIGHT OF PRIVACY

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

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

Employees should not use personal accounts to exchange e-mail or other information that is related to the official business of the County.

204.3 PROHIBITED USE OF E-MAIL

Sending derogatory, defamatory, obscene, disrespectful, sexually suggestive and harassing or any other inappropriate messages on the e-mail system is prohibited and may result in discipline.

E-mail messages addressed to the entire Bureau are only to be used for official business related items that are of particular interest to all users and must be approved by the Bureau Chief, Assistant Chief or commanders. Personal advertisements are not acceptable.

It is a violation of this policy to transmit a message under another user's name. Users are strongly encouraged to log off the network when their computer is unattended. This added security measure would minimize the misuse of an individual's e-mail, name and/or password by others.

204.4 E-MAIL RECORD MANAGEMENT

Electronic Mail

Because the e-mail system is not designed for long-term retention of messages, e-mail that the employee desires to save or that becomes part of an official record should be printed or saved electronically in a case file or online case file. Users of e-mail are responsible for the management of their mailboxes; all non-essential or junk e-mails should be purged regularly.

204.5 PERSONAL / PRIVATE E-MAIL ACCOUNTS

Employees are prohibited from using personal devices or accounts in the performance of their work for the County, except in urgent circumstances and to the extent that this does not impermissibly interfere with the performance of the employees' statutory duties. Urgent circumstances include unusual situations when the employee must use a personal device or account to address County business that, if left unanswered, could seriously impact the County's operations.

As indicated in County of Orange policy, [Restrictions on Use of Private Devices and Accounts for County Business](#), if an employee (including un-paid volunteers) receives any e-mail message that would qualify as a public record, to their personal e-mail account, they must forward the original message to a county account, copy a county account on any response, and direct the sender to use the county account for future correspondence. The employee must then promptly delete the e-mail from their personal account.

For further information, please read the County of Orange policy in its entirety.

Administrative Communications

205.1 PURPOSE AND SCOPE

Administrative communications of this Bureau are governed by the following policies.

205.2 MEMORANDUMS

Memorandums may be issued periodically via e-mail to announce and document all promotions, transfers, hiring of new personnel, separations, personnel and group commendations, or other changes in status.

205.3 CORRESPONDENCE

Personnel should use Office of the District Attorney letterhead only for official business and with supervisory approval (exceptions include standardized formatted letters).

205.4 BUREAU OF INVESTIGATION SURVEYS

All surveys made in the name of the Orange County District Attorney's Office Bureau of Investigation shall be authorized by the Bureau Chief or the Assistant Chief(s).

Retiree Concealed Firearms

206.1 PURPOSE AND SCOPE

The purpose of this policy is to outline the process and conditions associated with the issuance, denial, suspension or revocation of a concealed weapons (CCW) endorsement for retired investigators of this Bureau.

206.2 POLICY

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

206.3 LEOSA

The Bureau Chief may issue an identification card for LEOSA purposes to any qualified former investigator of this Bureau who (18 USC § 926C(c)):

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

206.3.1 LEOSA IDENTIFICATION CARD FORMAT

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

If the Orange County District Attorney Bureau of Investigation qualifies the former investigator, the LEOSA identification card or separate certification should indicate the date the former investigator was tested or otherwise found by the Bureau to meet the active duty standards for qualification to carry a firearm.

206.3.2 AUTHORIZATION

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

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

Retiree Concealed Firearms

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

206.4 CALIFORNIA IDENTIFICATION CARD ISSUANCE

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

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

206.4.1 CALIFORNIA IDENTIFICATION CARD FORMAT

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

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

206.5 FORMER INVESTIGATOR RESPONSIBILITIES

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

Retiree Concealed Firearms

206.5.1 RESPONSIBILITIES UNDER LEOSA

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

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

206.5.2 MAINTAINING A CALIFORNIA IDENTIFICATION CARD CCW ENDORSEMENT

In order to maintain a CCW Approved endorsement on an identification card issued under California law, the retired investigator shall (Penal Code § 25465):

- a. Qualify every five years with the authorized firearm at the Bureau range or at a course approved by this Bureau at the retired investigator's expense.
- b. Remain subject to all applicable Bureau policies and federal, state and local laws.
- c. Not engage in conduct that compromises public safety.

206.6 CARRYING FIREARMS OUT OF STATE

Subject to 18 United States Code 926C (H.R. 218), qualified retired investigators of this Bureau may be authorized to carry a concealed weapon in other states. It is the responsibility of the individual retired investigator to confirm his/her right to carry a firearm out of state.

206.7 DENIAL, SUSPENSION OR REVOCATION OF A LEOSA IDENTIFICATION CARD

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

In the event a LEOSA identification card has been denied, suspended or revoked by the Bureau, visit www.LEOSAonline.com for further information on how to obtain a LEOSA identification card.

206.8 DENIAL, SUSPENSION OR REVOCATION OF A CALIFORNIA CCW ENDORSEMENT CARD

Retiree Concealed Firearms

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

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

Retiree Concealed Firearms

4. In the event that personal contact with the retiree cannot be reasonably achieved in a timely manner, the Professional Standards Division should attempt to make the above notice of temporary suspension through another law enforcement officer. For example, if a retiree was arrested or detained by a distant agency, the Professional Standards Division may request that a law enforcement officer from that agency act as the agent of the Bureau to deliver the written notification.

206.9 ADMINISTRATIVE REQUIREMENTS

- a. The Orange County District Attorney's Office Bureau of Investigation training coordinator will keep written records, signed by the retiree, verifying compliance with this policy.
- b. The retiree shall keep the training coordinator informed in writing, of any change of address for the purpose of complying with reporting/notification requirements.

Training Policy

207.1 PURPOSE AND SCOPE

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

207.2 PHILOSOPHY

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

207.3 OBJECTIVES

The objectives of the Orange County District Attorney's Office Bureau of Investigation's training program are to:

- a. Enhance the level of law enforcement service to the public.
- b. Increase the technical expertise and overall effectiveness of our personnel.
- c. Provide for continued professional development of Bureau personnel.

207.4 TRAINING PLAN

A training plan will be developed and maintained by the training coordinator under the supervision of the Professional Standards Division commander. It is the responsibility of the training coordinator to maintain, review and update the Training Plan on an annual basis. The plan will address the following areas:

- a. Legislative changes and case law
- b. State mandated training
- c. Critical issues training

207.5 TRAINING NEEDS ASSESSMENT

The Professional Standards Division will conduct an annual training-needs assessment of the Bureau of Investigation. The needs assessment will be reviewed by the Bureau of Investigation's Staff. Upon approval of the Staff, the needs assessment, will form the basis for the Training Plan for the fiscal year.

Chapter 3 - General Operations

Use of Force

300.1 PURPOSE AND SCOPE

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

In addition to those methods, techniques, and tools set forth below, the guidelines for the reasonable application of force contained in this policy shall apply to all policies addressing the potential use of force, including but not limited to the Control Devices and Techniques (Policy § 304) and Conducted Electrical Weapon (Policy § 302) policies.

300.1.1 DEFINITIONS

Definitions related to this policy include:

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

Feasible - Reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the investigator or another person (Government Code § 7286(a)(3)).

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

Force does not include the use of the following:

- a. Use of a firm grip control while performing routine functions such as searching, handcuffing or escorting.
- b. Reasonable intervention necessitated by the physical incapacity of a subject (e.g., lifting an intoxicated or disabled person).
- c. Use of handcuffs, waist restraints or flex cuffs.

If a subject sustains any type of injury (visible or complaint only) during any of the above-mentioned techniques, the investigator shall make appropriate notifications to their immediate supervisor.

Actively resistant - Physically evasive movements to defeat an investigator's attempt at control, including bracing, tensing, running away, or verbally or physically signaling an intention to avoid or prevent being taken into or retained in custody.

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Passive non-compliant - Does not respond to verbal commands, but also offers no physical form of resistance.

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

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

300.2 POLICY

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

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

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

300.2.1 FAIR AND UNBIASED USE OF FORCE

Investigators are expected to carry out their duties, including the use of force, in a manner that is fair and unbiased (Government Code § 7286(b)(11)). See the Bias-Based Policing Policy § 400 for additional guidance.

300.2.2 DUTY TO INTERCEDE

Any investigator present and observing another law enforcement officer using force that is clearly beyond that which is objectively reasonable under the circumstances, shall, when in a position to do so, intercede (as defined by Government Code § 7286) to prevent the use of unreasonable force. An investigator who observes another law enforcement officer use force that exceeds the degree of force permitted by law shall immediately report these observations to a supervisor.

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

Any investigator shall report potential excessive force to a supervisor when present and observing another investigator using force that the investigator believes to be beyond that which is necessary, as determined by an objectively reasonable investigator under the circumstances, based upon the totality of the information actually known to the investigator (Government Code § 7286(b)(3)).

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300.2.3 PERSPECTIVE

When observing or reporting force used by a law enforcement officer, each investigator should take into account the totality of the circumstances and the possibility that other law enforcement officers may have additional information regarding the threat posed by the subject (Government Code § 7286(b)(9)).

300.2.4 FAILURE TO INTERCEDE

An investigator who has received the required training on the duty to intercede and then fails to act to intercede when required by law, may be disciplined in the same manner as the investigator who used force beyond that which is necessary (Government Code § 7286(b)(19)).

300.3 USE OF FORCE

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

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

Given that no policy can realistically predict every possible situation an investigator might encounter, investigators are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident. Investigators may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance (Government Code § 7286(b)(2)).

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

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

300.3.1 USE OF FORCE TO EFFECT AN ARREST

Any peace officer may use objectively reasonable force to effect an arrest, to prevent escape, or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance on the part of the person being

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arrested; nor shall an investigator be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape, or to overcome resistance. Retreat does not mean tactical repositioning or other de-escalation techniques (Penal Code § 835a).

300.3.2 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

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

- a. The apparent immediacy and severity of the threat to investigators or others (Penal Code § 835a).
- b. The conduct, apparent mental state, and the individual's ability to comply when being confronted, as reasonably perceived by the investigator at the time (Penal Code § 835a).
- c. Investigator/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of investigators available vs. subjects).
- d. The conduct of the involved investigator leading up to the use of force (Penal Code § 835a).
- e. The effects of suspected drugs or alcohol.
- f. Proximity of weapons or dangerous improvised devices.
- g. The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- h. The availability of other reasonable and feasible options and their possible effectiveness (Penal Code § 835a).
- i. Seriousness of the suspected offense or reason for contact with the individual prior to and at the time force is used.
- j. Training and experience of the investigator.
- k. Potential for injury to investigators, suspects, bystanders, and others.
- l. Whether the person appears to be resisting, attempting to evade arrest by flight, or is attacking the investigator.
- m. The risk and reasonably foreseeable consequences of escape.
- n. The apparent need for immediate control of the subject or a prompt resolution of the situation.
- o. Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the investigator or others.
- p. Prior contacts with the subject or awareness of any propensity for violence.
- q. Any other exigent circumstances.

300.3.3 RESTRICTIONS ON THE USE OF A CHOKE HOLD

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

300.3.4 RESTRICTIONS ON THE USE OF CAROTID CONTROL HOLD

Investigators of this Bureau are not authorized to use a carotid restraint hold. A carotid restraint means a vascular neck restraint or any similar restraint, hold, or other defensive tactic in which pressure is applied

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to the sides of a person's neck that involves a substantial risk of restricting blood flow and may render the person unconscious in order to subdue or control the person (Government Code § 7286.5).

300.3.5 ADDITIONAL RESTRICTIONS

Terms such as "positional asphyxia," "restraint asphyxia," and "excited delirium" continue to remain the subject of debate among experts and medical professionals, are not universally recognized medical conditions, and frequently involve other collateral or controlling factors such as narcotics or alcohol influence or pre-existing medical conditions. While it is impractical to restrict an investigator's use of reasonable control methods when attempting to restrain a combative individual, investigators are not authorized to use any restraint or transportation method which might unreasonably impair an individual's breathing or respiratory capacity for a period beyond the point when the individual has been adequately and safely controlled. Once the individual is safely secured, investigators should promptly check and continuously monitor the individual's condition for signs of medical distress (Government Code § 7286.5).

300.3.6 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a passive non-compliant or actively resisting individual. Investigators may only apply those pain compliance techniques for which they have successfully completed bureau-approved training. Investigators utilizing any pain compliance technique should consider:

- a. The degree to which the application of the technique may be controlled given the level of resistance.
- b. Whether the person can comply with the direction or orders of the investigator.
- c. Whether the person has been given sufficient opportunity to comply.

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

300.3.7 USE OF FORCE TO SEIZE EVIDENCE

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

300.3.8 ALTERNATIVE TACTICS - DE-ESCALATION

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

- a. Summoning additional resources that are able to respond in a reasonably timely manner.

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- b. Formulating a plan with responding investigators before entering an unstable situation that does not reasonably appear to require immediate intervention.
- c. Employing other tactics that do not unreasonably increase investigator jeopardy.

In addition, when reasonable, investigators should evaluate the totality of circumstances presented at the time in each situation and when feasible, consider and utilize reasonably available alternative tactics and techniques that may persuade an individual to voluntarily comply or may mitigate the need to use a higher level of force to resolve the situation before applying force (Government Code § 7286(b)(1)). Such alternatives may include but are not limited to:

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

300.4 DEADLY FORCE APPLICATIONS

In determining whether deadly force is necessary, investigators shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable investigator.

If an objectively reasonable investigator would consider it safe and feasible to do so under the totality of the circumstances, investigators shall evaluate and use other reasonably available resources and techniques when determining whether to use deadly force. To the extent that it is reasonably practical, investigators should consider their surroundings and any potential risks to bystanders prior to discharging a firearm (Government Code § 7286(b)(5)).

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

- a. An investigator may use deadly force to protect themselves or others from what the investigator reasonably believes is an imminent threat of death or serious bodily injury to the investigator or another person.
- b. An investigator may use deadly force to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the investigator reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, the investigator shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the investigator has objectively reasonable grounds to believe the person is aware of those facts.

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

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

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A threat of death or serious bodily injury is "imminent" when, based on the totality of the circumstances, a reasonable investigator in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the investigator or another person. An imminent harm is not merely a fear of future harm, no matter how great the likelihood of harm, but is one that, from appearances, must be instantly confronted and addressed (Penal Code § 835a).

"Totality of the circumstances" means all facts known to the investigator at the time, including the conduct of the investigator and the subject leading up to the use of deadly force (Penal Code § 835a).

300.4.1 SHOOTING AT OR FROM MOVING VEHICLES

Shots fired at or from a moving vehicle are rarely effective and involve considerations and risks in addition to the justification for the use of deadly force. When feasible, investigators should take reasonable steps to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. An investigator should only discharge a firearm at a moving vehicle or its occupants when the investigator reasonably believes there are no other reasonable means available to avert the imminent threat of the vehicle, or if deadly force other than the vehicle is directed at the investigator or others (Government Code § 7286(b)(20)).

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

300.4.2 DISPLAYING OF FIREARMS

Given that individuals might perceive the display of a firearm as a potential application of force, investigators should carefully evaluate each tactical situation and use sound discretion when drawing a firearm in public by considering the following guidelines (Government Code § 7286(b)(5)):

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

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

300.5 REPORTING THE USE OF FORCE

Any use of force by a member of this bureau shall be documented promptly, completely, and accurately in an appropriate report, depending on the nature of the incident. The investigator should articulate the factors perceived and why the investigator believed the use of force was reasonable under the circumstances. To collect data for purposes of training, resource allocation, analysis, and related purposes, the Bureau may require the completion of additional report forms, as specified in bureau policy, procedure, or law.

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An investigator involved in a use of force incident may contact/request a representative.

300.5.1 REPORT RESTRICTIONS

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

300.5.2 NOTIFICATION TO SUPERVISORS

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

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

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

300.5.3 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

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

300.6 MEDICAL CONSIDERATIONS

Once it is reasonably safe to do so, properly trained investigators should promptly provide or procure medical assistance for any person injured or claiming to have been injured in a use of force incident (Government Code § 7286(b)(15)).

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

Based upon the investigator's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff, or medical staff at the jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related

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reports and, whenever practicable, should be witnessed by another investigator and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

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

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

300.7 SUPERVISOR RESPONSIBILITY

When a supervisor is able to respond to an incident in which there has been a reported application of force, the supervisor is expected to (Government Code § 7286(b)):

- a. Obtain the basic facts from the involved investigators. Absent an allegation of misconduct or excessive force, or when a member requests representation, this will be considered a routine contact in the normal course of duties. If misconduct is suspected, the supervisor should not continue interviewing those directly involved or witness to the incident.
- b. Ensure that any injured parties are examined and treated.
- c. When possible, separately obtain a recorded interview with the subject upon whom force was applied. If this interview is conducted without the person having voluntarily waived their Miranda rights, the following shall apply:
 1. The content of the interview should not be summarized or included in any related criminal charges.
 2. The fact that a recorded interview was conducted should be documented in a property or other report.
 3. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.
- d. Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.
- e. Identify any witnesses not already included in related reports.
- f. Review and approve all related reports.
- g. Determine if there is any indication that the subject may pursue civil litigation.

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1. If there is an indication of potential civil litigation, the supervisor should complete and route a notification of a potential claim through the appropriate channels.
- h. Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy non-compliance or if for any reason further investigation may be appropriate.

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

300.8 TRAINING

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

300.8.1 TRAINING REQUIREMENTS

Required periodic training should also include:

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

300.8.2 STATE-SPECIFIC TRAINING REQUIREMENTS

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

300.9 USE OF FORCE ANALYSIS

At the end of each calendar year, the PSD commander should prepare an analysis report on use of force incidents. The report should be submitted to the Bureau Chief. The report should not contain the names of investigators, suspects or case numbers, and should include:

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

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300.10 USE OF FORCE COMPLAINTS

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

300.11 POLICY REVIEW

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

300.12 POLICY AVAILABILITY

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

300.13 PUBLIC RECORDS REQUESTS

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

Use of Force Review Boards

301.1 PURPOSE AND SCOPE

The purpose of the Use of Force Review Board is to identify and discuss issues requiring immediate action and/or additional follow-up. By doing so, it increases the Bureau's ability to recommend necessary changes to policies, procedures, practices, and training to assist personnel in dealing with future use of force incidents.

Additionally, personnel who exhibited acts of bravery, courage, and/or exceptional performance will be discussed and a recommendation for the appropriate Bureau commendation will be considered.

301.2 POLICY

The Bureau of Investigation will objectively evaluate the use of force by its members to ensure that current policy and training is sufficient or if change of policy or additional training is necessary.

301.3 REVIEW BOARD

It is the policy of the Bureau of Investigation to convene a Use of Force Review Board when:

- a. The use of force by a member results in very serious injury or death to another.
- b. The circumstances surrounding every accidental or intentional discharge of a firearm, whether the member is on or off-duty, excluding range training or recreational use.
- c. Determined by the Bureau Chief, to review the circumstances surrounding any use of force incident.

The Professional Standards Division commander will convene the Use of Force Review Board as necessary. The involved member's Division commander or supervisor will ensure that all relevant reports, documents and materials are available for consideration and review by the Board.

301.3.1 COMPOSITION OF THE BOARD

- a. The Board will consist of investigative commanders of the Bureau of Investigation.
- b. Other subject matter experts of the Bureau may be required to participate as part of the Review Board when deemed necessary.
- c. The Use of Force Review Board will be responsible for reviewing all investigative reports, evidence, legal opinions, and circumstances surrounding each incident. The Board will forward their recommendation(s) to the Assistant Chief, who upon concurrence, will forward the final recommendation to the Bureau Chief.
- d. A closing report will follow the review to document the findings of the Board and final disposition.

301.3.2 RESPONSIBILITIES OF THE BOARD

The Use of Force Review Board is empowered to conduct a review into the circumstances of an incident. The Board members may request further information, call persons to present information, and may

Use of Force Review Boards

request that the involved member(s) appear before the Board. The involved member will be notified of the meeting of the Board and may be represented by legal counsel and/or other representation through all phases of the review process.

The Board does not have the authority to recommend discipline.

The Bureau Chief will determine whether the board should delay its review until after completion of any criminal investigation, administrative investigation, review by any prosecutorial body, filing of criminal charges, the decision not to file criminal charges, or any other action. The Board should be provided all relevant available material from these proceedings for its consideration.

The review shall be based upon those facts which were reasonably believed by the investigator at the time of the incident, applying legal requirements, Bureau policy and procedures, and approved training to those facts. Facts later discovered but unknown to the investigator at the time, can neither justify nor call into question an investigator's decision regarding use of deadly force.

After review, the Board will recommend a finding on whether or not additional training is necessary or if policies need to be reviewed and/or revised. The Board chairperson will submit the written recommendation to the Bureau Chief as to any training and/or policy issues.

At the conclusion of any additional reviews, copies of all relevant reports and information will be filed with the Bureau Chief.

Once the Bureau Chief has reached their specific finding, the training coordinator may convene a separate training committee to address specific training needs and recommendations for the Bureau without specific reference to the facts of the incident considered by the Board.

Conducted Electrical Weapon

302.1 PURPOSE AND SCOPE

This policy provides guidelines for the issuance and use of Electro-Muscular Disruption Technology (EMDT) through the deployment of the Bureau-approved Conducted Electrical Weapon (CEW), also commonly known as a Taser, manufactured by Axon. For the purposes of this policy, any further mentioning or reference to any EMDT device shall mean CEW, and will henceforth be referred to as such.

302.2 POLICY

The Conducted Electrical Weapon (CEW), is a less-lethal hand held electronic device that uses electrical currents to control suspects. The CEW is intended to control a violent or actively resisting individual, while minimizing the risk of serious injury. The appropriate use of such a device should result in fewer serious injuries to investigators and suspects.

302.3 ISSUANCE AND CARRYING CONDUCTED ELECTRICAL WEAPONS

Investigators can voluntarily choose whether or not they want to carry a CEW. If an investigator chooses to do so, they must successfully complete Bureau-approved annual CEW training. CEWs will be available for check out as needed.

It is recommended that investigators check out a CEW when conducting field enforcement, search warrants, arrest warrants, probation and parole sweeps, special events, or site security.

Investigators shall only use the CEW and cartridges that have been issued by the Bureau. Investigators in special task forces or undercover assignments may secure the CEW in the driver's compartment of their vehicle while on duty. Investigators who choose to wear the CEW as a part of their equipment shall use a Bureau approved holster.

1. When the CEW is carried as part of the investigator's equipment it shall be carried in a Bureau approved holster, which will require the CEW be initially drawn with the support hand only. The CEW may then be transferred to the strong hand if desired. If the investigator is unable to access the CEW with their support hand (involved in a physical altercation, injury sustained, etc.) the CEW may be drawn with the strong hand.
2. All CEWs shall be clearly and distinctly marked to differentiate them from the duty weapon and any other device.
3. Whenever practical, investigators should carry a total of two or more CEW cartridges on their person at all times while carrying a CEW.
4. Investigators shall be responsible for ensuring that their issued CEW is properly maintained and in good working order at all times.

Conducted Electrical Weapon

5. Investigators should never hold both a firearm and the CEW at the same time, unless lethal force is justified.
6. The CEW shall be spark tested at the beginning of each shift, to ensure it is functioning properly. If the CEW is not functioning properly, the CEW should be turned in to a TASER staff instructor and a new one shall be issued or checked out. If a TASER staff instructor is unavailable, the CEW should be rendered inoperable until it can be inspected by a TASER instructor or AXON.

302.4 VERBAL AND VISUAL WARNINGS

Unless it would otherwise endanger officer safety or is impractical due to circumstances, a verbal warning of the intended use of the CEW should precede the application of the device in order to:

1. Provide the individual opportunity to voluntarily comply.
2. Provide other investigators and individuals with a warning that a CEW may be deployed.

If, after the verbal warning, an individual is unwilling to voluntarily comply with the investigators lawful orders and it appears both reasonable and practical under the circumstances, the investigator may, but is not required to, display the electrical arc (provided there is no cartridge loaded into the CEW) or the aiming laser in a further attempt to gain compliance prior to the application of the CEW. The aiming laser should never be intentionally directed into the eyes of another as it may permanently impair his or her vision.

The fact that a verbal and/or other warning was given or the reasons it was not given shall be documented in any related report(s).

302.5 USE OF THE CEW

The application of the CEW is likely to cause intense, but momentary, pain. As such, investigators should carefully consider and balance the totality of circumstances available prior to using the CEW including, but not limited to, the following factors:

1. The conduct of the individual being confronted (as reasonably perceived by the investigator at the time)
2. Investigator/subject factors (i.e., age, size, relative strength, skill level, injury, exhaustion, number of investigators v. subjects)
3. Influence of drugs and/ or alcohol
4. Mental capacity/ irrational behavior
5. Proximity of weapons
6. The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained
7. Time and circumstance permitting, the availability of other options (What resources are reasonably available to the investigator under the circumstances?)
8. Seriousness of the suspected offense or the reason for contact with the individual
9. Training and experience of the investigator

Conducted Electrical Weapon

10. Potential for injury to citizens, investigators and suspects
11. Risk of escape
12. Other exigent circumstances

302.5.1 APPLICATION OF THE CEW

Authorized personnel may use the CEW when the circumstances perceived by the investigator at the time indicate that such application is reasonably necessary to control a person in any of the following circumstances:

- a. Control a subject who is violent or actively resisting
- b. Control a subject who has demonstrated, by words or action, an intention to be violent or physically resist, and reasonably appears to present the potential to harm investigators, him/herself or others
- c. Disarm a suspect or to control a subject who is reasonably believed to be armed
- d. Stop a fleeing subject who is wanted for a serious crime (mere flight from a pursuing investigator, without other known circumstances or factors, is not good cause for the use of a CEW to apprehend an individual)

Additional factors to consider when utilizing the CEW include, but are not limited to:

- a. Location of the subject(s)
- b. Ability to safely approach the subject(s)
- c. Need to immediately control the subject(s)

302.5.2 SPECIAL DEPLOYMENT CONSIDERATIONS

The use of the CEW should generally be avoided in the following situations unless the totality of the circumstances indicates that other available options reasonably appear ineffective or would present a greater danger to the investigator, the subject or others, and the investigator reasonably believes that the need to control the individual outweighs the risk of using the CEW. This includes:

- a. Individuals who are known to be pregnant
- b. Elderly individuals or small children
- c. Individuals with obviously low body mass / very thin persons
- d. Individuals who are handcuffed or otherwise restrained
- e. Individuals who have been recently sprayed with a flammable chemical agent or who are otherwise in close proximity to any known combustible vapor or flammable material, including alcohol-based oleoresin capsicum (OC) spray
- f. Individuals whose position or activity may result in collateral injury (e.g., falls from height, operating vehicles)

Because the application of the CEW in drive-stun mode (direct contact without darts) relies primarily on pain compliance and requires close proximity to the subject, additional caution should be exercised. The application in drive-stun mode should be limited to brief applications in which pain compliance would reasonably appear necessary to achieve control.

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The CEW shall not be used to psychologically torment, elicit statements or to punish any individual.

302.5.3 TARGETING CONSIDERATIONS

While manufacturers generally recommend that reasonable efforts should be made to target lower center mass and to avoid intentionally targeting the head, neck, chest and groin, it is recognized that the dynamics of each situation and officer safety may not permit the investigator to limit the application of the CEW darts to a precise target area. As such, investigators should take prompt and ongoing care to monitor the condition of the subject if one or more darts strike the head, neck, chest or groin until he/she is released to the care of paramedics or other medical personnel.

302.5.4 MULTIPLE APPLICATIONS OF THE CEW

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

If the first application of the CEW appears to be ineffective in gaining control of an individual and if the circumstances allow, the investigator should consider certain factors before additional applications of the CEW, including:

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

302.5.5 ACTIONS FOLLOWING DEPLOYMENTS

Investigators shall notify a supervisor of all CEW discharges as soon as practicable. The expended cartridges should be collected, along with both probes, wire, and sampling of AFIDS. They should be submitted into evidence. The cartridge serial number should be noted and documented on the evidence paperwork. The evidence packaging should be marked "biohazard" if the probes penetrated the subject's skin. The expended cartridge and its' contents should be retained until all potential for criminal and/or civil litigation has expired.

302.5.6 DANGEROUS ANIMALS

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

Animal Control shall be contacted if an animal is seriously injured.

302.5.7 FLYING / PRISONER TRANSPORT

Investigators are not authorized to carry CEWs in the aircraft passenger cabin when performing prisoner transport.

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302.6 DOCUMENTATION

With the exception of the "spark test" conducted prior to field deployment of a CEW, investigators shall document all intentional CEW discharges in the related investigator's report. Notification shall also be made to a supervisor in compliance with the Use of Force Policy. Investigators may demonstrate a "sparking" of the CEW or a "laser demonstration" in an effort to gain voluntary compliance of a subject. A laser demonstration occurs when the laser is directed at a suspect's body. Investigators utilizing the spark or laser demonstration shall document this in the related investigator's report. Investigators shall document all accidental CEW discharges in a memorandum to the Bureau Chief describing the circumstances of the incident, including the cartridge serial number.

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

- a. The type and brand of CEW and cartridge and cartridge serial number
- b. Date, time and location of the incident
- c. Name of supervisor notified
- d. Whether any display, laser or arc deterred a subject and gained compliance
- e. The number of CEW activations, the duration of each cycle, the duration between activations, and (as best as can be determined) the duration that the subject received applications
- f. The range at which the CEW was used
- g. The type of mode used (probe or drive-stun)
- h. Location of any probe impact
- i. Location of contact in drive-stun mode
- j. Description of where missed probes went
- k. Whether medical care was provided to the subject
- l. Whether or not the subject sustained any injuries
- m. Whether or not any investigators sustained any injuries
- n. Identification of all personnel firing CEWs
- o. Identification of all witnesses
- p. Observations of the subjects physical and physiological actions
- q. Any known or suspected drug use, intoxication or other medical problems

302.7 MEDICAL TREATMENT

Absent extenuating circumstances or unavailability, only qualified personnel, including paramedics, should carefully remove CEW darts from a person's body. Used CEW darts shall be considered a sharp biohazard similar to a used hypodermic needle. Universal precautions should be taken accordingly.

All persons who have been struck by CEW darts or which have been subjected to the electric discharge of the device shall be medically evaluated prior to booking. Additionally, any such individual who falls under any of the following categories should, as soon as practical, be examined by paramedics or other qualified medical personnel:

1. The person is suspected of being under the influence of controlled substances and/or alcohol.

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2. The person may be pregnant.
3. The person reasonably appears to be in need of medical attention.
4. The CEW darts are lodged in sensitive areas (e.g., groin, female breast, near the eyes).
5. The person requests medical attention.

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

If any individual refuses medical attention, such a refusal should be witnessed by another investigator and/or medical personnel and shall be documented in related report.

If an audio recording is made of the contact or an interview with the individual, any refusal should be included, if possible.

302.8 SUPERVISOR RESPONSIBILITIES

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

A supervisor should review each incident where a person has been exposed to an activation of the CEW. The device's onboard memory should be downloaded through the data port and submitted with the related investigator's report. Photographs of the probe sites should be taken and witnesses interviewed.

The unit supervisor, if provided CEWs to be issued, shall maintain a checkout log in order to account for CEW location when not in storage.

302.9 TRAINING

Any certification or recertification in the use of the CEW shall be under the direct control and supervision of the Professional Standards Division. In addition to the initial Bureau approved training required to carry and use the CEW, employees shall be re-certified every year by a Bureau approved CEW instructor.

For each accidental, incorrect or inappropriate discharge, a memo shall be submitted to the Use of Force Review Board via the chain of command. The Use of Force Review Board will make a determination if the investigator is required to receive additional training. For further, refer to Use of Force Review Boards.

Training shall include the following:

- a. A review of this policy
- b. A review of the Use of Force Policy
- c. Performing weak-hand draws to reduce the possibility of unintentionally drawing and firing a firearm

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- d. Target area considerations, to include techniques or options to reduce the unintentional application of probes near the head, neck, chest and groin
- e. Handcuffing a subject during the application of the CEW and transitioning to other force options
- f. De-escalation techniques
- g. Restraint techniques that do not impair respiration following the application of the CEW

302.10 STORAGE

All CEWs not assigned to or carried by personnel shall be secured in the unit supervisor's office or range room, in a locked storage cabinet and/or locked in a security box.

302.11 OFF-DUTY CONSIDERATIONS

Investigators are not authorized to carry Bureau-issued CEWs while off-duty. Investigators shall ensure that CEWs are secured while in their homes, under their control, in a manner that will keep the device inaccessible to others.

If an investigator becomes involved in law enforcement activity, they shall then be considered on-duty for purposes of deployment of the CEW.

302.12 CEW MAINTENANCE

A taser instructor staff member shall ensure that an inspection of the CEWs and data downloads documenting the usages of the CEWs assigned to personnel are conducted annually.

All maintenance and repairs are to be conducted by Axon only.

302.13 INVENTORY

All CEWs from all units will be inventoried no less than once a quarter by the Professional Standards Division commander, the Professional Standards Division supervisor or their designee. The results of the inventory will be reported via memorandum to the Assistant Chief. The inventory memorandum will be kept on file for two years.

Firearms

304.1 PURPOSE AND SCOPE

This policy establishes procedures for the acquisition, use, and documentation of training in the use of firearms. The Bureau Chief or his or her designee shall approve all Bureau of Investigation firearms before they are acquired and utilized by any member of this Bureau.

304.2 AUTHORIZED WEAPONS

All 830.1 and 830.35 investigators shall carry authorized firearms, while on duty, unless exempted by the Bureau Chief (See § 303.2.5 regarding off-duty).

An investigator shall not carry a firearm unless they have qualified with that firearm at an authorized Bureau range, except in an emergency or as directed by a supervisor.

Newly hired investigators must qualify within two weeks after beginning their employment with the Bureau.

304.2.1 DUTY WEAPONS

The Bureau of Investigation issued weapons are a Glock Model 19, generation 5 MOS, 9mm semi-automatic handgun or a Glock Model 43X, 9mm semi-automatic handgun. Investigators performing a specialized assignment, detail, duties, or other exceptions may be authorized to carry an alternate duty firearm at the discretion of the Bureau Chief.

304.2.2 ALTERNATE PERSONALLY OWNED DUTY FIREARMS

The Bureau has authorized the use of specific .45 caliber and 9mm handguns as alternate duty weapons to the Glock models 19 and 43X, 9mm caliber handguns. The authorized .45 caliber and 9mm handguns may be deployed by Bureau investigators providing the following conditions are met:

1. Due to ever-changing models of handguns, the rangemaster shall be responsible for maintaining an addendum of handgun models that meet the appropriate criteria for alternate personally owned duty firearms. All changes to the addendum must be approved by the PSD Commander.
2. Any Bureau approved semi-automatic handgun shall be in 9 x 19 or .45 ACP caliber. The handgun shall have a barrel length of at least 3 inches and have a minimum capacity of 10 rounds.
3. A Bureau approved duty holster is required for the use of a personally owned handgun for primary duty use. The holster for the personally owned handguns will not be supplied by the Bureau and shall be purchased at the investigator's expense.
4. All investigators must have their .45 or 9mm handgun and holster inspected by the Bureau rangemaster on a yearly basis, approved by the PSD supervisor, and must qualify with the handgun prior to deploying it for duty use.
5. Any and all maintenance and modifications done on personally owned handguns, must be done by a certified Armorer, at the investigator's own expense and inspected by the Bureau rangemaster or certified range staff member prior to duty use.

Firearms

6. Privately owned handguns must meet the same standards as Bureau issued weapons. Any changes to the weapon's functioning components, including but not limited to: sights, trigger or trigger assembly, slide components, frame components or magazine components, must be approved by the Bureau rangemaster.
7. Ammunition for qualification and duty use will be provided by the Bureau.

304.2.3 HOLSTERS

Investigators shall carry the Bureau issued holster, or at the investigators' expense, may purchase another holster. All holsters used by Bureau personnel must first be inspected by the rangemaster and approved by the PSD supervisor. Rangemasters will consider the following criteria when approving a holster:

- a. Holsters shall have a retention device that secures the firearm in the holster.
- b. The retention device shall not be activated by the trigger finger.
- c. The holster design must allow personnel to secure the weapon without the use of the support hand.
- d. Holsters shall be designed to completely cover the trigger of the firearm, preventing the trigger from being accessed until the weapon is removed from the holster.
- e. Holsters should provide a belt loop attachment to secure the holster to the waist area. (Paddle attachments may be approved; however, they diminish the investigator's ability to retain the weapon during a struggle.)

The use of an ankle holster shall be limited to personnel and assignments where direct contact with the public does not occur. Investigators working in the field in an official law-enforcement capacity shall carry their duty weapon in a Bureau approved holster affixed to their waist belt, adjacent to a visible Bureau dome badge. Exemption to this policy may be made for investigators involved in undercover assignments. However, this exemption requires prior approval by the employee's supervisor and Division commander.

Before deploying the ankle holster, investigators shall successfully complete a Bureau of Investigation ankle holster training course. All ankle holsters must be designed for the specific weapon and have a trigger guard, safety strap device, or some other type of retention, which secures the weapon in the holster. All ankle holsters shall be inspected and approved by the rangemaster prior to use.

Deviation from policy

Nothing in this policy is intended to prohibit the use of non-approved holsters by personnel who are acting in an undercover capacity; where the use of holsters associated with law enforcement could reveal the true identity of the employee and become an officer safety issue.

304.2.4 AUTHORIZED SECONDARY / OFF-DUTY WEAPONS

Investigators desiring to carry a second or alternate weapon, either on-duty or off-duty, are subject to inspection by the rangemaster, approval by the PSD supervisor, and must meet the following guidelines:

Firearms

- a. The weapon shall be of good quality and workmanship and have an appropriate safety mechanism approved by the rangemaster.
- b. Only one secondary weapon may be carried at a time.
- c. The purchase of the weapon and ammunition shall be the responsibility of the investigator.
- d. The weapon shall be concealed at all times and carried in a safe manner as to prevent accidental cocking, discharge, or loss of physical control.
- e. The weapon shall be subject to inspection by the rangemaster and approved by the PSD supervisor whenever deemed necessary.
- f. Ammunition shall be the same as the Bureau issue. If the caliber of the weapon is other than that issued by the Bureau, the investigator shall only purchase factory-manufactured ammunition, with prior recommendation from the rangemaster and approval by the PSD supervisor.
- g. Investigators shall successfully qualify with the weapon on the regular Bureau qualification course and must demonstrate their proficiency, safe handling and serviceability of the weapon prior to being authorized to carry the weapon. Once authorized to carry the weapon, the investigator shall qualify annually at the Bureau range.
- h. A complete description of the weapon(s) shall be contained on the qualification record maintained by the rangemaster.
- i. If any member desires to own more than one weapon utilized while off-duty, the member may do so, as long as they meet all requirements set forth in this policy for each weapon used.
- j. Ammunition shall be factory manufactured by an approved company as suggested by the rangemaster. Reload ammunition is not authorized.

304.2.5 AUTHORIZED OFF-DUTY CARRY

The carrying of firearms by sworn investigators (830.1 PC and 830.35 PC) while off-duty is permitted by the Bureau Chief, but may be rescinded should circumstances dictate (e.g., administrative leave). Sworn investigators who choose to carry a firearm while off-duty will be required to carry the issued firearm or a firearm that meets the guidelines explained in § 303.2.4.

304.2.6 AMMUNITION

Investigators shall carry only Bureau authorized issued ammunition in their duty weapon. All ammunition must be factory-manufactured. Reload ammunition shall not be authorized.

304.2.7 ALCOHOL & DRUGS

The carrying of a firearm while off-duty into any place, private or public, where alcoholic beverages are being consumed is discouraged, unless the investigator is acting in an official work-related capacity where a firearm would be necessary.

Any investigator taking a prescription medication that would tend to adversely affect the investigator's senses, judgment, or ability to safely handle a firearm shall immediately notify his/her supervisor.

304.2.8 NIGHT SIGHTS AND WEAPON MOUNTED FLASHLIGHTS

Firearms

Night sights and/or gun mounted flashlights may only be installed on a weapon carried on or off-duty after they have been examined by the rangemaster and approved by the PSD supervisor.

- a. Any approved night sight shall be installed only pursuant to manufacturer specifications.
- b. Once approved night sights have been properly installed on any weapon, the investigator shall qualify with the weapon to ensure proper functionality and sighting of the weapon prior to carrying it.

Duty handguns with a weapon mounted light (WML) is an optional program. The following directives shall provide the guidance necessary to implement the use of WMLs for investigators:

- a. The WML shall be activated by use of the standard toggle type switch and shall have a minimum output of 350 lumens.
- b. The duty holster shall be designed for the handgun with the WML attached. If the investigator elects to purchase their own holster, the holster shall comply with policy.
- c. Only approved models of WML shall be permitted.
- d. After the initial inspection, investigators shall be required to take and successfully pass the OCDA "Duty Handgun with WML" training course or equivalency before they can carry their WML equipped handgun on duty.
- e. All mandated qualifications shall be completed with the WML system attached to the handgun.
- f. Investigators shall have their WML inspected annually by a Bureau armorer as part of the annual duty handgun inspection.
- g. Investigators shall be responsible for the maintenance of their equipment.

304.2.9 SINGLE ACTION CARRY HANDGUNS

Single Action Only (SAO) handguns for on and off-duty use are optional for investigators who meet the requirements of the program set forth by the rangemaster. Investigators must maintain safe weapon handling and qualification standards or may be subject to removal from the program.

- a. Investigators shall successfully complete the OCDA 1911/2011 SAO transition course or equivalency before they can carry an approved handgun designed to be carried in single action on or off duty.
- b. Any handgun intended for duty use shall comply with all requirements specified in Policy 303.2.2 (Alternate Personally Owned Duty Firearms).
- c. Any handgun designed to be carried in single action shall have a functional manual thumb-activated safety selector.
- d. Any handgun with a grip safety shall retain the feature as designed.

304.3 MINIATURE REFLEX SIGHTS

Duty handguns with miniature reflex sights (MRS) is an optional program. Investigators choosing to use an MRS shall provide a Bureau approved MRS, and the required accompanying equipment such as back-up iron sights and holster at their own expense.

Firearms

- a. It is highly recommended to consult the Bureau armorer prior to any purchases for detailed information on approved equipment options pertaining to the duty handgun with MRS program.
- b. The duty holster shall be designed for the handgun with the MRS attached. If the investigator elects to purchase their own holster, the holster shall comply with policy.
- c. The rangemaster shall maintain an addendum of approved MRS brands and models.
- d. Only approved models of MRS shall be permitted.
- e. Only handguns with approved MRS mounting solutions shall be permitted.
- f. Investigators are strictly prohibited from making any modifications to Bureau issued handguns to accommodate an MRS.
- g. Gunsmith machining on a personally owned handgun to accommodate an MRS is permitted, but shall follow all guidelines listed on the addendum maintained by the rangemaster.
- h. Back-up iron sights shall be installed and tall enough to be seen through the MRS optic window.
- i. On Bureau issued handguns equipped with factory MRS mounting solution, installation of the MRS and back-up iron sights shall be performed by the Bureau armorer only.
- j. After the initial inspection and installation, investigators shall be required to take and successfully pass the OCDA "Duty Handgun with MRS" training course or equivalency before they can carry their MRS equipped handgun on duty.
- k. All mandated qualifications shall be completed with the MRS attached to the handgun.
- l. Investigators shall have their MRS inspected annually by a Bureau armorer as part of the annual duty handgun inspection.
- m. Investigators shall be responsible for the maintenance of their equipment.

304.4 SAFE HANDLING OF FIREARMS

The intent of this policy is to promote proper firearm safety on and off-duty. Employees shall maintain the highest level of safety when handling firearms and shall consider the following:

304.4.1 SAFETY CONSIDERATIONS

- a. Investigators shall not place or store any firearm or other weapon on the Bureau premises except when the place of storage is locked.
- b. Investigators shall not unnecessarily brandish any firearm.
- c. Investigators shall not clean, repair, load or unload a firearm anywhere in the Bureau, except in the range or with the use of a clearing barrel.
- d. Rifles or less lethal shotguns removed from vehicles shall be loaded at designated areas within the range or at the direction of the rangemaster or range staff.
- e. Always treat your firearm as though it is loaded.
- f. Never point the firearm at yourself or anyone else. Always point your firearm in a safe direction where no one can be injured in the event the gun is accidentally fired.
- g. Keep your finger off the trigger and outside the trigger guard until the firearm is pointed at the target and you have decided to fire.
- h. Before handing a firearm to any other person, be sure the magazine is removed, the slide or bolt is locked open, and visually and physically inspect the firearm to verify no ammunition remains in the chamber.

Firearms

- i. Whenever you pick up any firearm personally check the firearm to verify it is unloaded.
- j. Remember that Glock, along with some other brand pistols, will fire with a cartridge remaining in the chamber, even after the magazine has been removed.

304.4.2 STORAGE OF FIREARMS AT HOME

Investigators shall ensure that all firearms and ammunition are locked and secured while in their homes in a manner that will keep them inaccessible to children and irresponsible adults. Rifles shall also be stored in compliance with § 303.9 of this policy manual. Investigators shall be aware that negligent storage of a firearm could result in criminal prosecution under Penal Code § 25100 (and/or civil liability).

Bureau issued or approved firearms shall not be stored in a vehicle unless the firearm is locked in the vehicle's trunk, in a locked container that is out of plain view, or in a locked container that is permanently affixed to the vehicle's interior and not in plain view (Penal Code § 25140; Penal Code § 25452). A locked container does not include a vehicle's utility or glove compartment (Penal Code § 16850). Investigators shall be aware that negligent storage of a firearm in a vehicle could result in criminal prosecution under Penal Code § 25410.

Penal code § 25140(d) provides an exception to the above which states, "This section does not apply to a peace officer during circumstances requiring immediate aid or action that are within the course of his or her official duties."

304.4.3 SURRENDER OF WEAPON

An investigator shall not surrender their firearm, except as a last resort, after exhausting every tactical tool at their disposal. The surrender of a firearm rarely de-escalates a serious situation and can, in fact, put the investigator in greater jeopardy.

304.5 FIREARMS QUALIFICATIONS

All new investigators will qualify during the first two weeks of employment. Investigators will be required to demonstrate their ability to safely handle, fire and clear malfunctions on the weapon they are authorized to carry.

In addition to regular qualification schedules, the rangemaster shall be responsible for providing all investigators with annual practical training designed to simulate field situations. This may include the use, familiarization and breakdown of Bureau rifles for certified personnel.

All sworn members of the Bureau are required to qualify quarterly with their duty weapon on an approved range course and demonstrate the ability to safely and proficiently handle their firearm. The rangemaster will designate the range qualification dates and times. The rangemaster shall complete accurate records of quarterly qualifications and training and provide them to the training coordinator for filing in the individual investigator's training file.

Rifle/shotgun trained investigators shall qualify once a year.

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304.5.1 NON QUALIFICATION

If any investigator is unable to qualify for any reason, including injury, illness, duty status, or scheduling conflict, that investigator shall complete a memorandum to their respective commander through the normal chain of command prior to the end of the required shooting qualification period. The investigator's immediate supervisor will forward a copy of the memorandum to the training coordinator who shall file it within the investigator's training file.

1. Investigators who fail to attend range qualification or who fail to qualify may be subject to discipline.
2. Investigators who fail to qualify shall be provided remedial training until proficiency is demonstrated and will be subject to the following requirements:
 1. Additional range training may be required until consistent weapon proficiency is demonstrated.
 2. Investigators shall be given credit for a range qualification only after remedial training and a qualifying score is obtained.
3. No range credit will be given for the following:
 1. Unauthorized range make-up.
 2. Failure to qualify after remedial training.

304.5.2 RANGE SAFETY

- a. Investigators shall be governed by all rules and regulations pertaining to the use of the police range, and shall obey all orders issued by the rangemaster and/or the range staff. Investigators shall not "dry fire" or practice "quick draws" except under the rangemaster or range staff's supervision.
- b. Investigators entering the range will carry their firearm in a safe manner.
- c. Firearms will be holstered at all times unless instructed by the range staff to do otherwise.
- d. Firearms will be loaded and unloaded **ONLY** on the firing line or in a designated area at the direction of the range staff.
- e. No shooting will take place on the firing line unless supervised by a member of the range staff.
- f. Firearms shall not be handled, cycled or brandished behind the firing line except in designated areas.
- g. Only shooters assigned to targets shall be permitted on the firing line. All others will remain to the rear of the firing line at a location designated by the range staff.
- h. All shooters on the firing line and others in close proximity of the firing line shall wear hearing protection and eye protection.
- i. The muzzle of all firearms will be pointed down range at all times.
- j. No malfunctioning firearms shall be removed from the firing line without first clearing the malfunction and removing all ammunition, unless authorized by the range staff. If assistance is required, the firearm should be kept pointed down range, and the non-shooting hand should be raised, to request range staff assistance.

304.6 RANGEMASTER DUTIES

Firearms

The range will be under the exclusive control of the rangemaster as approved by the Professional Standards Division. Any orders or directives not having to do with range training or range safety will be administered by the Professional Standards Division supervisor or commander. All members attending range will follow the directions of the rangemaster and/or range staff. The rangemaster will maintain a roster of all investigators attending the range, and will submit the roster to the training coordinator after each range date. Failure of any investigator to sign in and out with the range staff may result in non-qualification.

The range shall remain operational and accessible to investigators during hours established by the rangemaster.

Only investigators, welfare fraud investigators and trainees (830.1 or 830.35 PC) are qualified and allowed to shoot on the range. Anyone else that desires to qualify must contact the commander of the Professional Standards Division for approval.

The rangemaster has the responsibility of making periodic inspections, at least once a year of all duty weapons carried by investigators of this Bureau to determine their proper operation. The rangemaster or certified range staff member has the authority to deem any privately owned weapon unfit for service. The investigator will be responsible for all repairs to their personal weapon and it will not be returned to service until inspected and approved by the rangemaster or certified range staff member.

304.7 WEAPON MAINTENANCE AND MALFUNCTION

It shall be each investigator's responsibility to clean and maintain his/her weapon in good working order. Any indication of malfunction shall be called to the attention of the rangemaster and/or the investigator's supervisor and immediate steps shall be taken to identify and remedy the malfunction.

Off-duty firearms not owned by the Bureau are personally owned weapons. The investigator is responsible for the furnishing, maintenance and repair of such weapon.

- a. Bureau issued and personally owned handguns carried on duty shall be inspected by a Bureau armorer prior to being approved for carry. It is the responsibility of investigators to bring all equipment in for an annual inspection during the anniversary hire month.
- b. Handguns shall be cleaned prior to annual inspection. Handguns deemed to be unsafe by the Bureau armorer shall not be carried on duty until the deficiency has been corrected.
- c. The serial numbers and descriptions of all Bureau issued and personally owned handguns carried on duty shall be recorded and maintained by the rangemaster.
- d. All parts for personally owned handguns will be provided at the investigator's expense.

304.7.1 REPAIR AND/OR MODIFICATIONS OF DUTY WEAPON

Firearms

The rangemaster shall be the only person authorized to repair or modify any Bureau-owned weapon. All repairs and/or modifications of Bureau issued weapons not performed by the rangemaster or a certified range staff member must be approved, in advance, by the rangemaster and accomplished by a licensed qualified gunsmith.

In the event an investigator received authorization to carry their personally owned weapon as their duty weapon, any repairs or modifications to the weapon must be approved by the rangemaster.

304.8 FLYING WHILE ARMED

The Federal Aviation Administration (FAA) has imposed rules governing law enforcement investigators flying armed on commercial aircraft. Here are the guidelines that will directly affect our Bureau and personnel:

- a. Investigator(s) wishing to fly while armed must be flying in an official capacity, not for vacation or pleasure purposes; and
- b. Investigators must carry their Bureau identification card and California driver's license. Additionally, investigator(s) when requested must present their identification to airline officials; and
- c. Investigator(s) must have completed the now mandated FAA security training, covering investigators flying while armed. The training shall be given by the Bureau appointed instructor; and
- d. An official teletype shall be sent prior to travel. The teletype must outline the investigator's necessity to fly armed, must detail his/her itinerary, and should include that the investigator(s) has completed the mandatory FAA training for law enforcement officer(s) flying while armed; and
- e. It is the investigator's responsibility to notify the air carrier in advance of the intended armed travel. This notification can be accomplished by early check-in at the carrier's check-in counter; and
- f. Discretion must be used to avoid alarming passengers or crew by displaying your firearm. The firearm must be kept on your person concealed at all times, and may not be stored in an overhead compartment; and
- g. Generally, never surrender your firearm to anyone. Resolve any problems with a management representative of the air carrier, which may include the flight captain and/or ground security manager; and
- h. Armed investigators may not consume any alcoholic beverage while aboard an aircraft, or eight hours prior to boarding an aircraft.

304.9 RIFLE AND SHOTGUN PROGRAM

- a. Participation in the Bureau's rifle and shotgun program is based on the employee's assignment. The approval of program participation is at the sole discretion of the Bureau.
- b. Investigators shall not carry or utilize a rifle or shotgun unless they have successfully completed Bureau training. As part of the rifle certification process, investigators not previously trained must attend and pass the Bureau approved 30 hour rifle training course. Investigators that were trained

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at a prior agency and have the training documented in their POST profile must attend a Bureau training and qualification. The rifle training course will be scheduled as needed to meet the needs of the Bureau.

- c. Investigators who were authorized to privately purchase assault weapons for duty use prior to January 1, 2021 (see §303.11.3) shall complete required training and qualification with the rifle they purchased.
- d. Subsequent training will be consistent with the Bureau policy on qualifications.

304.9.1 RIFLE/SHOTGUN DEPLOYMENT

Investigators may deploy the rifle/shotgun in any circumstance where the investigator can articulate a reasonable expectation that the rifle may be needed. Examples of some general guidelines for deploying the rifle/shotgun may include, but are not limited to:

- a. Situations where the investigator reasonably anticipates an armed encounter;
- b. When an investigator is faced with a situation that may require the delivery of accurate and effective fire at long range;
- c. Situations where an investigator reasonably expects the need to meet or exceed a suspect's firepower;
- d. When an investigator reasonably believes that there may be a need to deliver fire on a barricaded suspect or a suspect with a hostage;
- e. When an investigator reasonably believes that a suspect may be wearing body armor;
- f. When authorized or requested by a supervisor.

304.9.2 DISCHARGE OF RIFLE/SHOTGUN

The discharge of the rifle or shotgun shall be governed by the Use of Force Policy § 300.

304.9.3 FIELD READY

Any qualified investigator carrying a rifle in the field shall maintain the weapon in a field ready condition until deployed.

A rifle is considered in a field ready condition when it has been inspected by the investigator, the fire selector switch is in the "safe" position, the chamber is empty, the bolt is forward and locked, and a fully loaded magazine is inserted into the magazine well.

A shotgun is considered in a field ready condition when it has been inspected by the assigned investigator, the fire selector switch is in the "safe" position, the chamber is empty, and the magazine is loaded to capacity.

304.9.4 QUALIFICATION

All mandated qualifications apply and will be consistent with the requirements of the rifle and shotgun program. Failure to qualify may result in the on-duty use privilege being suspended or revoked.

304.9.5 RIFLE/SHOTGUN MAINTENANCE

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- a. Primary responsibility of Bureau owned rifles/shotguns shall fall on the Bureau rangemaster.
- b. Primary responsibility of privately owned rifles shall fall on the investigator. The Bureau rangemaster or designee shall inspect each rifle on a yearly basis.
- c. Each investigator shall report any damage or malfunctions to their immediate supervisor or rangemaster.
- d. No modification shall be made to any rifle/shotgun without prior authorization from the Bureau rangemaster.
- e. Each Bureau and privately owned rifle/shotgun shall be subject to inspection by a rangemaster.

304.10 RIFLE/SHOTGUN STORAGE

- a. While on duty, the Bureau/personal rifles and Bureau shotguns will be secured in the trunk or a non-visible rear cargo area of the vehicle.
- b. When the rifle/shotgun is secured, it will be unloaded, bolt open, no tension on the hammer and the safety-selector switch in the "safe" position. A cable lock will run through the open ejection port and down through the empty magazine well. The cable lock will then be secured to a fixed area inside the trunk or cargo area of the vehicle.
- c. If an investigator cannot secure the personal rifle in their vehicle (e.g. illness or injury), it will be stored at the Bureau in a secure location until the investigator can retrieve it.
- d. The personal rifle will be taken home at the end of every shift and secured in compliance with Penal Code § 25100, and § 303.3.2 of this Policy Manual - Storage of Firearms at Home.

It is the investigator's responsibility to ensure that all firearms and ammunition are secured in a manner that keeps them inaccessible to children and irresponsible adults. Investigators shall be aware that negligent storage of a firearm could result in criminal prosecution under Penal Code § 25100.

304.11 RIFLE/SHOTGUN SPECIFICATIONS

Rifle Specifications

1. Caliber: 5.56x45mm
2. Semiautomatic ONLY. No select fire (full auto or burst) weapons will be authorized for private purchase
3. Barrel Length: 16"
 1. Barrel over-all length MUST be 16"
 2. No short barreled rifles (SBR's) will be authorized (CPC 33210)
 3. A rifle is considered an SBR when it's over-all barrel length is less than 16" Barrel Twist: 1:7", 1:8" and 1:9"
4. Stock: Collapsible only to accommodate rifle racks
5. Sights: Fixed or folding back-up iron sights\upper receiver: Flattop (A3 style) Upper/Lower receiver MUST be from the approved manufacturer list
6. Color: black, green or tan

Shotgun Specifications

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- a. Remington Model 870 12 Ga. pump shotgun
- b. Remington Model R12 Auto Loading Tactical shotgun, or like mode as approved by the rangemaster
- c. Personally owned shotguns are not authorized

304.11.1 AUTHORIZED MANUFACTURERS

The rangemaster shall be responsible for maintaining an addendum of approved rifle/shotgun manufacturers. [Firearm Addendum 07152025.pdf](#)

304.11.2 AUTHORIZED ACCESSORIES

1. Weapon mounted lights (WML) from Surefire, Streamlight, or any manufacturer of similar quality are authorized.
 - a. Investigators will receive WML training as part of their 30 hour Rifle Course.
 - b. Investigators must qualify with the WML in low light conditions once per year, during their annual recertification training.
2. Sighting systems from Aimpoint, EOTech, Leupold, Trijicon, or any manufacturer of similar quality are authorized.
 1. If an approved sighting system is installed on the weapon, back-up iron sights must be installed as well.
3. Rifle/shotgun slings must be of quality construction and SHALL NOT impair the user's ability to manipulate the weapon (no restriction on single or double attachments).
4. Privately purchased magazines MUST be examined or inspected by the Bureau of Investigation rangemaster and approved by the PSD supervisor prior to deployment.
5. No "Air Soft Weapon" type products or accessories will be authorized. These "look- alike" products or accessories are often made to look like replica "name brand" products but are of poor quality.
6. The weapon and any accessories to include magazines, weapon mounted lights, sighting devices and slings must be inspected by the rangemaster and approved by the PSD supervisor. Personnel are encouraged to solicit the make and model numbers of approved weapons and accessory items prior to the purchase of said items.

304.11.3 PRIVATE PURCHASE OF ASSAULT WEAPON FOR DUTY USE

California Penal Code Section 30630(a) allows for the possession or use of an assault weapon by a sworn peace officer for a law enforcement purpose, weather on or off duty. Section 30630(b) allows for the delivery, transfer, and sale of an assault weapon to a sworn peace officer provided the peace officer is authorized by his or her employer to possess or receive the assault weapon.

Required authorization is defined as verifiable written certification from the head of the agency, identifying the recipient or possessor of the assault weapon as a peace officer and authorizing them to receive or possess the specific assault weapon, CPC 30630 (b) (1).

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- a. Upon completion of the training requirements set forth in section 303.9 (Rifle and Shotgun Program), sworn investigators may purchase (at their expense) an authorized assault rifle with a written certification from the Bureau Chief. To request this written certification from the Bureau Chief, sworn investigators must submit the request through their chain of command. The serial number and description of the weapon shall be recorded and maintained by the rangemaster.
- b. Current California law does not allow for the conversion of an assault weapon to a California compliant weapon nor does current California law allow for a California complaint weapon to be converted, registered, and utilized as an assault weapon by on or off-duty sworn peace officers.
- c. Purchase and retention of weapons under this program are subject to changes in California and/or Federal law. It is the responsibility of the investigator to ensure their compliance with an applicable law, including registration requirements and adherence to Bureau policy.

304.11.4 RIGHT TO RESCIND PERSONALLY OWNED ASSAULT RIFLE PROGRAM

The Bureau Chief retains the right to rescind the assault rifle program at any time.

304.11.5 SEPARATION FROM BUREAU AND DISCONTINUANCE OF PEACE OFFICER STATUS

Upon an employee's involuntary separation or resignation/retirement pending complaint, administrative charge, or investigation for misconduct, per California Penal Code 13510.8(b) the employee shall be subject to the following:

- a. Employees who have purchased an assault weapon under the guidelines listed in Policy 303.11.3 (Private Purchase of Assault Weapon for Duty Use) shall make the rifle California compliant or surrender the stripped serialized lower receiver of the weapon to the Bureau; transfer the weapon to a state where an assault weapon is legal to possess by a private citizen; or legally transfer pursuant to state law. Any transfer of an assault rifle must be reported to the California Department of Justice (DOJ). A [Notice of No Longer in Possession Form](#) (DOJ Form 4546) should be completed and submitted to the California Department of Justice. A copy of this form should also be given to the Professional Standards Division for documentation purposes.
- b. With the exception of the stripped serialized lower receiver, ALL remaining parts of the weapon are legal to possess and can be transferred to a California compliant lower receiver if the employee separates from the Bureau.

304.11.6 REGISTRATION OF PERSONALLY OWNED ASSAULT RIFLE

Upon receipt of a personally owned assault rifle, the member shall, within 90 days, register the assault weapon with the California Department of Justice (DOJ) pursuant to Article 5 of the Penal Code commencing with § 30900. With the registration, the member shall submit to DOJ a copy of the executed "Agreement to Purchase Personal Owned Assault Rifle."

Control Devices and Techniques

305.1 PURPOSE AND SCOPE

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

305.2 POLICY

In order to control subjects who are violent or who demonstrate the intent to be violent, the Orange County District Attorney Bureau of Investigation authorizes investigators to use control devices in accordance with the guidelines in this policy and the Use of Force Policy § 300.

305.3 ISSUING, CARRYING AND USING CONTROL DEVICES

Control devices described in this policy may be carried and used by members only if the device has been issued by the Bureau or approved by the Bureau Chief or an authorized designee.

Only members who have successfully completed Bureau-approved training in the use of any control device are authorized to carry and use the device.

Control devices may be used when a decision has been made to control, restrain or arrest a subject who is violent or who demonstrates the intent to be violent, and the use of the device appears reasonable under the circumstances. When reasonable, a verbal warning and opportunity to comply should precede the use of these devices.

When using control devices, members should carefully consider potential impact areas in order to minimize injuries and unintentional targets.

305.3.1 MAINTENANCE OF CONTROL DEVICES

The Professional Standards Division shall control the inventory and issuance of all control devices and shall ensure that all damaged, inoperative, outdated or expended control devices are properly disposed of, repaired or replaced.

Every control device will be periodically inspected by the Professional Standards Division or the designated instructor for a particular control device. The inspection shall be documented.

305.3.2 USER RESPONSIBILITIES

All normal maintenance, charging or cleaning shall remain the responsibility of personnel using the various devices. Any damaged, inoperative, outdated or expended control devices or munitions, along with documentation explaining the cause of the damage, shall be returned to the Professional Standards Division for disposition. Damage to County Property forms shall also be prepared and forwarded through the chain of command, when appropriate, explaining the cause of damage.

Control Devices and Techniques

305.3.3 ISSUING OF CONTROL DEVICES

Every sworn investigator will be offered the following control devices to carry during their course of their duties:

- a. 21" ASP Friction Loc baton with sidebreak scabbard
- b. Oleoresin Capsicum with holder

Every non-sworn member will be offered Oleoresin Capsicum to carry during the course of their duties.

305.4 EXPANDABLE BATON GUIDELINES

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

When carrying a baton, uniformed personnel shall carry the baton in its authorized holder on the equipment belt. Plainclothes and non-field personnel may carry the baton as authorized and in accordance with the needs of their assignment or at the direction of their supervisor.

305.4.1 APPROVED BATONS

Investigators are permitted to carry the following expandable batons:

- a. ASP Friction Loc Baton (16"/21"/26")
- b. ASP Talon Baton (16"/21"/26")

If an investigator chooses to carry an ASP baton, other than the Friction Loc or Talon, they must obtain prior approval from the ACT / Baton staff. Each baton shall be carried in an authorized holder designed for that particular baton.

305.5 OLEORESIN CAPSICUM (OC) GUIDELINES

As with other control devices, oleoresin capsicum (OC) spray may be considered for use to bring under control an individual or groups of individuals who are engaging in, or are about to engage in violent behavior. OC spray should not, however, be used against individuals or groups who merely fail to disperse or do not reasonably appear to present a risk to the safety of officers or the public.

305.5.1 OC SPRAY

Members carrying OC spray shall carry the device in its holster on the equipment belt. Plainclothes and non-field personnel may carry OC spray as authorized, in accordance with the needs of their assignment or at the direction of their supervisor.

305.5.2 TREATMENT FOR OC SPRAY EXPOSURE

Control Devices and Techniques

Persons who have been sprayed with or otherwise affected by the use of OC should be promptly provided with clean water to cleanse the affected areas. Those persons who complain of further severe effects shall be examined by appropriate medical personnel.

305.6 POST-APPLICATION NOTICE

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

305.7 TRAINING FOR CONTROL DEVICES

ASP baton and OC training will be mandatory for all sworn investigators however, the investigator has the option of whether they choose to receive and/or carry the baton or OC during the course of their duties.

OC training will be mandatory for all non-sworn members however, they have the option of whether they choose to receive and/or carry OC during the course of their duties.

The training coordinator shall ensure that all personnel who are authorized to carry a control device have been properly trained and certified to carry the specific control device and are retrained or re-certified as necessary. ASP baton and OC training will occur every other year for both sworn and non-sworn personnel.

- a. Proficiency training shall be monitored and documented by a certified, control-device weapons or tactics instructor.
- b. All training and proficiency for control devices will be documented in the investigator's training file.
- c. Investigators who fail to demonstrate proficiency with the control device or knowledge of this Bureau's Use of Force Policy § 300 will be provided remedial training. If an investigator cannot demonstrate proficiency with a control device or knowledge of this Bureau's Use of Force Policy after remedial training, the investigator will be restricted from carrying the control device.

305.8 REPORTING USE OF CONTROL DEVICES AND TECHNIQUES

Any application of a control device or technique listed in this policy shall be documented in the related incident report and reported pursuant to the Use of Force Policy § 300.

305.9 REQUEST FOR ISSUANCE OF CONTROL DEVICES

If at any time, a Bureau member decides they would like to carry a Bureau-issued baton or oleoresin capsicum, they must contact the Professional Standards supervisor. The member will be scheduled for the next available training.

Control Devices and Techniques

Investigator-Involved Shootings and Deaths

306.1 PURPOSE AND SCOPE

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

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

306.2 POLICY

The policy of the Orange County District Attorney Bureau of Investigation is to ensure that investigator-involved shootings and deaths are investigated in a thorough, fair and impartial manner, and consistent with other administrative reviews (Use of Force Policy § 300 and Use of Force Review Board Policy § 301).

306.3 DEFINITIONS

Investigator-Involved Shooting: An incident in which an 830.1 PC or 830.35 PC investigator discharges a firearm at another person while exercising peace officer authority, on or off-duty. Shooting incidents include hit and non-hit shootings.

- a. **Hit Shooting:** Bureau member intentionally or unintentionally shoots and a person is struck.
- b. **Non-Hit Shooting:** Bureau member intentionally shoots at a person and no one is struck.

Investigator-involved shooting incidents require a review protocol that considers criminal culpability, administrative issues, and training issues (policy violation, training, etc.).

Firearm Discharge: An incident in which an 830.1 PC or 830.35 PC investigator discharges his/her firearm without the intent to shoot at a person and no one is struck. Firearms discharge incidents include:

- a. **Warning shot:** Bureau member intentionally shoots as a warning without intent to strike a person and no one is struck.
- b. **Animal shooting:** Bureau member intentionally shoots at an animal, whether the animal is struck or not.
- c. **Unintentional discharge:** Bureau member unintentionally shoots and no one is struck.
- d. **Shooting (other):** Bureau member intentionally shoots at an object, other than range qualification or a training exercise.

Investigator-Involved Shootings and Deaths

A firearms discharge incident requires an administrative review and a use of force review. The extent of the administrative review will depend upon the circumstances and seriousness of the matter. The handling supervisor and the Bureau commander will triage the incident and determine the appropriate recourse.

306.4 TYPES OF INVESTIGATIONS

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

- A criminal investigation of the suspect's actions.
- A criminal investigation of the involved investigator's actions.
- An administrative investigation as to policy compliance by involved investigators.
- A civil investigation to determine potential liability.
- A use of force review to determine if there is a need to address training and/or policy.

306.5 JURISDICTION

Jurisdiction is determined by the location of the shooting and the Bureau of Investigation.

306.5.1 INVESTIGATION RESPONSIBILITY

The agency where the incident occurred is responsible for the criminal investigation of the suspect's actions. The criminal investigation of the investigator-involved shooting will be determined by the agency where the incident occurred. The Orange County District Attorney's Office will be responsible for any civil and/or administrative investigation(s) as well as a use of force review.

Criminal Investigation of Suspect(s)	Criminal Investigation of Investigator(s)	Civil Investigation	Administrative Investigation	Use of Force Review
Agency where incident occurred	Agency where incident occurred or the Orange County Sheriff's Department	Orange County District Attorney's Office	Orange County District Attorney's Office	Orange County District Attorney's Office

306.6 INVESTIGATION PROCESS

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

306.6.1 UNINVOLVED INVESTIGATOR RESPONSIBILITIES

Investigator-Involved Shootings and Deaths

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

- a. Secure the scene and identify and eliminate hazards for all those involved.
- b. Take reasonable steps to obtain emergency medical attention for injured individuals.
- c. Request resources from the local jurisdiction.
- d. Coordinate a perimeter or pursuit of suspects.
- e. Check for injured persons and evacuate as needed.
- f. Brief the supervisor upon arrival.

306.6.2 NOTIFICATIONS

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

- Bureau Chief
- Assistant Chief(s)
- Division commander
- Professional Standards Division commander
- Psychological support
- Involved investigator's Bureau representative (AOCDS/ACLEMS)
- Coroner (if necessary)
- Media Relations

306.6.3 SUPERVISOR RESPONSIBILITIES

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

1. Attempt to obtain a brief overview of the situation from any uninvolved investigators. An uninvolved investigator excludes a percipient witness. A percipient witness will be provided legal representation if requested.
2. If necessary, the supervisor may administratively order any OCDA investigator to immediately provide public safety information necessary to secure the scene, identify injured parties and pursue suspects.
 - a. Public safety information shall be limited to such things as outstanding suspect information, number and direction of any shots fired, perimeter of the incident scene, identity of known or potential witnesses and any other pertinent information to ensure public safety.
 - b. The initial on-scene supervisor should not attempt to order any involved investigator to provide any information other than public safety information.
3. Provide all available information to the commander and Control One. If feasible, sensitive information should be communicated over secure networks.

Investigator-Involved Shootings and Deaths

4. Take command of and secure the incident scene with additional OCDA members until properly relieved by the proper jurisdictional agency or Orange County Sheriff's Department.
5. As soon as practicable, ensure that involved investigators are transported (separately, if feasible) to a suitable location for further direction.
 - a. Where it is determined that there is a case-specific legitimate and substantial business justification, each involved OCDA investigator should be given an administrative order not to discuss the incident with other involved investigators or OCDA members pending further direction from a supervisor.
 - b. When an involved investigator's weapon is left at the scene for other than officer-safety reasons (e.g., evidence), ensure that he/she is provided with a comparable replacement weapon or transported by other investigators. If no suitable replacement is available prior to transport, a suitable replacement shall be given to the investigator as soon as practical upon arrival at the desired location (hospital, Bureau, etc.).
 - c. An involved investigator's weapon should not be taken until the processing of the investigator is conducted and a suitable replacement is available.

306.6.4 INVOLVED INVESTIGATORS

The following shall be considered for the involved investigator:

- a. Any request for legal or union representation will be accommodated.
 - a. Where it is determined that there is a case-specific legitimate and substantial business justification, involved OCDA investigators shall not be permitted to meet collectively or in a group with an attorney or any representative prior to providing a formal interview or report.
 - b. Requests from involved non-OCDA officers should be referred to their employing agency.
- b. Discussions with licensed attorneys will be considered privileged as attorney-client communications.
- c. 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 investigator, 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 investigator under investigation for noncriminal matters (Government Code § 3303(i)).
- d. A licensed psychotherapist shall be provided by the OCDA to each involved OCDA investigator. A licensed psychotherapist may also be provided to any other affected OCDA members, upon request.
 1. Interviews with a licensed psychotherapist will be considered privileged.
 2. An interview or session with a licensed psychotherapist may take place prior to the member providing a formal interview or report. However, involved members shall not be permitted to consult or meet collectively or in a group with a licensed psychotherapist prior to providing a formal interview or report.
 3. A separate fitness-for-duty exam may also be required (see the Fitness for Duty Policy).

Investigator-Involved Shootings and Deaths

- e. A law enforcement personnel, whether or not a party to an action, has a right to refuse to disclose, and to prevent another from disclosing, a confidential communication between the law enforcement personnel and a peer support team member made while the peer support team member was providing peer support services, or a confidential communication made to a crisis hotline or crisis referral service.
 - 1. A confidential communication may be disclosed under the following circumstances;
 - a. To refer a law enforcement personnel to receive crisis referral services by a peer support member.
 - b. During a consultation between two peer support team members.
 - c. If the peer support team member reasonably believes that disclosure is necessary to prevent death, substantial bodily harm, or commission of a crime.
 - d. If the law enforcement personnel expressly agrees in writing that the confidential communication may be disclosed.
 - e. In a criminal proceeding.
 - f. If otherwise required by law (Government Code § 8669.4).

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

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

306.6.5 NOTIFICATION TO DEPARTMENT OF JUSTICE

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

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

306.7 CRIMINAL INVESTIGATION

The proper jurisdiction or the Orange County Sheriff's Department is responsible for the criminal investigation into the circumstances of any OCDA investigator-involved shooting or death.

If available, investigative personnel from this Bureau may be assigned to partner with investigators from outside agencies to avoid duplicating efforts in related criminal investigations.

Investigator-Involved Shootings and Deaths

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

- a. OCDA supervisors and Professional Standards Division personnel should not participate directly in any voluntary interview of OCDA investigators. This will not prohibit such personnel from monitoring interviews or providing the criminal investigators with topics for inquiry.
- b. If requested, any involved investigator will be afforded the opportunity to consult individually with a representative of his/her choosing or an attorney prior to speaking with criminal investigators (Government Code § 3303(i)). However, in order to maintain the integrity of each involved investigator's statement, where it is determined that there is a case-specific legitimate and substantial business justification, involved investigators shall not consult or meet with a representative or an attorney collectively or in groups prior to being interviewed.
- c. If any involved investigator is physically, emotionally or otherwise not in a position to provide a voluntary statement when interviewed by criminal investigators, consideration should be given to allowing a reasonable period for the investigator to schedule an alternate time for the interview.
- d. Any voluntary statement provided by an involved investigator will be made available for inclusion in any related investigation, including administrative investigations. However, no administratively coerced statement will be provided to any criminal investigators unless the investigator consents.

306.7.1 REPORTS BY INVOLVED OCDA INVESTIGATORS

In the event that suspects remain outstanding or subject to prosecution for related offenses, this Bureau shall retain the authority to order involved OCDA investigators to cooperate with other agencies. Per Government Code § 3304(a), "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."

Notwithstanding the foregoing, a member cannot be disciplined for exercising his/her Constitutional rights, including but not limited to, the 5th Amendment right against forced self-incrimination.

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

Nothing in this section shall be construed to deprive an involved OCDA investigator of the right to consult with legal counsel or union representative prior to completing any such criminal report.

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

306.7.2 WITNESS IDENTIFICATION AND INTERVIEWS

Investigator-Involved Shootings and Deaths

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

- a. Identification of all persons present at the scene and in the immediate area.
 1. When feasible, a recorded statement should be obtained from those persons who claim not to have witnessed the incident but who were present at the time it occurred.
 2. Any potential witness who is unwilling or unable to remain available for a formal interview should not be detained absent reasonable suspicion to detain or probable cause to arrest. Without detaining the individual for the sole purpose of identification, investigators should attempt to identify the witness prior to his/her departure.
- b. Witnesses who are willing to provide a formal interview should be asked to meet at a suitable location where criminal investigators may obtain a recorded statement. Such witnesses, if willing, may be transported by a member of the Bureau.
 1. A written, verbal or recorded statement of consent should be obtained prior to transporting a witness. When the witness is a minor, consent should be obtained from the parent or guardian, if available, prior to transportation.
- c. Promptly contacting the suspect's known family and associates to obtain any available and untainted background information about the suspect's activities and state of mind prior to the incident.

306.7.3 INVESTIGATIVE PERSONNEL

Once notified of an investigator-involved shooting or death, it shall be the responsibility of the designated Bureau of Investigation commander to assign appropriate investigative personnel to handle the investigation of related crimes. Orange County District Attorney's Office investigators will be assigned to work with investigators from the proper jurisdictional agency and may be assigned to separately handle the investigation of any related crimes not being investigated by the proper jurisdictional agency.

All related Bureau reports, except administrative and/or privileged reports, will be forwarded to the designated Bureau of Investigation supervisor for approval. Privileged reports shall be maintained exclusively by members who are authorized such access. Administrative reports will be forwarded to the appropriate Professional Standards Division commander.

306.8 ADMINISTRATIVE INVESTIGATION

In addition to all other investigations associated with an investigator-involved shooting or death, this Bureau will conduct an internal administrative investigation of OCDA investigators to determine conformance with Bureau policy. The investigation will be conducted under the supervision of the Professional Standards Division and will be considered a confidential investigator personnel file.

Interviews of members shall be subject to Bureau policies and applicable laws (see the Personnel Complaints Policy § 1005).

Investigator-Involved Shootings and Deaths

- a. If any investigator has voluntarily elected to provide a statement to criminal investigators, the assigned administrative investigator should review that statement before proceeding with any further interview of that involved investigator.
 1. If a further interview of the investigator is deemed necessary to determine policy compliance, care should be taken to limit the inquiry to new areas with minimal, if any, duplication of questions addressed in the voluntary statement. The involved investigator shall be provided with a copy of his/her prior statement before proceeding with any subsequent interviews.
- b. In the event that an involved investigator has elected to not provide criminal investigators with a voluntary statement, the assigned administrative investigator shall conduct an administrative interview to determine all relevant information.
 1. Although this interview should not be unreasonably delayed, care should be taken to ensure that the investigator's physical and psychological needs have been addressed before commencing the interview.
 2. If requested, the investigator shall have the opportunity to select an uninvolved representative, union representative or attorney to be present during the interview. However, in order to maintain the integrity of each individual investigator's statement, involved investigators shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed (Government Code § 3303(i)).
 3. Administrative interviews should be recorded by the assigned supervising investigator. The involved investigator may also record the interview (Government Code § 3303(g)).
 4. The investigator shall be informed of the nature of the investigation. If an investigator refuses to answer questions, he/she should be given his/her *Lybarger* or *Garrity* rights and ordered to provide full and truthful answers to all questions. The investigator shall be informed that the interview will be for administrative purposes only and that the statement cannot be used criminally.
 5. The Professional Standards Division shall compile all relevant information and reports necessary for the Bureau to determine compliance with applicable policies.
 6. Regardless of whether the use of force is an issue in the case, the Use of Force Review Board should be provided all relevant available material from the investigation which will be used to determine whether there is a need to address any training issues or recommend change of policy as indicated in § 301.3.2.
 7. Any other indications of potential policy violations shall be determined in accordance with standard disciplinary procedures.

306.9 CIVIL LIABILITY RESPONSE

A member of this Bureau may be assigned to work exclusively under the direction of the legal counsel for the Bureau to assist in the preparation of materials deemed necessary in anticipation of potential civil litigation.

All materials generated in this capacity shall be considered attorney work product and may not be used for any other purpose. The civil liability response is not intended to interfere with any other investigation but shall be given reasonable access to all other investigations.

Investigator-Involved Shootings and Deaths

306.10 AUDIO AND VIDEO RECORDINGS

Any investigator involved in a shooting or death shall have the opportunity to review available Mobile Audio /Video (MAV), body-worn video, or other video or audio recordings prior to providing a recorded statement or completing reports.

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

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

306.11 DEBRIEFING

Following an investigator-involved shooting or death, the Orange County District Attorney Bureau of Investigation should conduct both a critical incident/stress debriefing and a tactical debriefing.

306.11.1 TACTICAL DEBRIEFING

A tactical debriefing should take place to identify any training or areas of policy that need improvement. The Bureau Chief should identify the appropriate participants. This debriefing should not be conducted until all involved members have provided recorded or formal statements to criminal and/or administrative investigators.

306.11.2 CRITICAL INCIDENT/STRESS DEBRIEFING

A critical incident/stress debriefing should occur as soon as practicable, with a licensed psychologist. The Professional Standards Division commander is responsible for organizing the debriefing. Notes and recorded statements should not be taken because the sole purpose of the debriefing is to help mitigate the stress-related effects of a traumatic event and they could become subject to disclosure of a California Public Records Act (CPRA).

The debriefing is not part of any investigative process. The facts of the case should not be discussed during the critical incident/stress debriefing. Care should be taken not to release or repeat any communication made during a debriefing unless otherwise authorized by policy, law or a valid court order.

Attendance at the debriefing is voluntary and shall only include those members of the Bureau directly involved in the incident, which can include support personnel (e.g., dispatchers, other non-sworn personnel). Family or other support personnel may attend with the concurrence of those involved in the incident. The debriefing shall be closed to the public and should be closed to all other members of the Bureau, including supervisory and Professional Standards Division personnel.

Investigator-Involved Shootings and Deaths

306.12 MEDIA RELATIONS

Any media release shall be prepared with input and concurrence from the supervisor and department representative responsible for each phase of the investigation. Releases will be available to the Public Affairs Spokesperson in the event of inquiries from the media.

It will be the policy of this Bureau not to release the identities of involved investigators absent their consent or as required by law. The investigator's appropriate association (AOCDS/ACLEMS) should be provided reasonable notice prior to the release of any investigators identified.

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

Investigator Response to Calls

307.1 PURPOSE AND SCOPE

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

307.2 RESPONSE TO CALLS

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

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

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

307.3 REQUESTING EMERGENCY ASSISTANCE

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

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

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

307.4 INITIATING CODE 3 RESPONSE

If an investigator believes a Code-3 response to any call is appropriate, the investigator shall immediately notify dispatch. Generally, only one unit should respond Code-3 to any situation. Should another investigator believe a Code-3 response is appropriate, they should respond until otherwise notified by dispatch or a supervisor that their Code-3 response should be terminated.

Investigator Response to Calls

307.5 RESPONSIBILITIES OF RESPONDING INVESTIGATORS

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

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

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

Domestic Violence

308.1 PURPOSE AND SCOPE

Domestic violence is alleged criminal conduct and it is the policy of the Orange County District Attorney's Office Bureau of Investigation to stress enforcement of criminal laws related to domestic violence, the protection of the victim, and the availability of civil remedies and community resources. This includes the arrest of domestic violence offenders if there is probable cause to believe an offense has occurred. If a Bureau employee becomes aware of a domestic violence incident, they shall report it to the local jurisdiction as soon as practical and take immediate action if appropriate.

Search and Seizure

309.1 PURPOSE AND SCOPE

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

309.2 POLICY

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

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

309.3 SEARCHES

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

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

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

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

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

Search and Seizure

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

309.3.1 RESIDENCE

Absent a valid search warrant, exigent circumstances, probation or parole authorization, or valid consent, every person has a reasonable expectation of privacy inside their home. Individuals do not, however, generally have a reasonable expectation of privacy in areas around their home where the general public (e.g. mailmen & salesmen) would reasonably be permitted to go.

309.3.2 PLAIN VIEW

Because an individual does not have an expectation of privacy as to items which are in plain view, no "search" has taken place in a constitutional sense when an object is viewed from a location where the investigator has a right to be.

An item in plain view may generally be seized when:

- a. It was viewed from a lawful location;
- b. There is probable cause to believe that the item is linked to criminal activity; and
- c. The location of the item can be legally accessed.

It is important to note that the so-called "Nexus Rule" requires that even items in plain view must not be seized unless there is probable cause to believe that item will aid in an investigation. Such a nexus should be included in any related reports.

309.3.3 EXIGENT CIRCUMSTANCES

Exigent circumstances permitting entry into premises without a warrant or valid consent generally include:

- a. Imminent danger of injury or death; or
- b. Serious damage to property; or
- c. Imminent escape of a suspect; or
- d. The destruction of evidence.

An exigency created by the investigator's own conduct as an excuse for a warrantless entry is not generally permitted.

309.3.4 CONSENT

Entry into a location for the purpose of conducting a search for any item reasonably believed relevant to any investigation is permitted once valid consent has been obtained. However, consent is only valid if it is:

- a. Voluntary (i.e. clear, specific and unequivocal); and
- b. Obtained from a person with authority to give the consent.

Search and Seizure

Whenever unusual circumstances would not otherwise prevent the use of the Bureau's "Consent to Search" form, investigators should have the individual read the form, ensure they understand it, and provide them with a copy after they have signed it.

If unusual circumstances prevent the use of the "Consent to Search" form, investigators should describe such circumstances in related report(s).

While there is no requirement that an individual be told of their right to refuse consent, such a warning and the use of the "Consent to Search" form provide strong support for the validity of any consent.

Consent must be obtained as the product of free will. It cannot be obtained through submission to authority, expressed or implied.

At any point that an individual withdraws consent, any related search should be discontinued unless and until otherwise legally permitted.

309.4 SEARCH PROTOCOL

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

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

309.5 DOCUMENTATION

Search and Seizure

Investigators are responsible to document any search and to ensure that any required reports are sufficient including, at minimum, documentation of the following:

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

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

Temporary Custody of Juveniles

310.1 PURPOSE AND SCOPE

This policy provides guidelines consistent with the Juvenile Justice and Delinquency Prevention Act for juveniles taken into temporary custody by members of the Orange County District Attorney Bureau of Investigation (42 USC § 5633).

Guidance regarding contacting juveniles at schools or taking a juvenile into protective custody can be found in the Child Abuse Policy (Policy § 313).

310.2 POLICY

Aside exigent circumstances and no other practicable place available, no juvenile may be held in temporary custody, secured or non-secured, at the Orange County District Attorney's Office for any violation of Welfare & Institutions Code § 601 or § 602. An individual taken into custody for any violation of Welfare & Institutions Code § 601 or § 602 shall be transported to and processed as soon as practical at the agency holding jurisdiction of the violation.

310.3 JUVENILES WHO SHOULD NOT BE HELD

Juveniles who exhibit any of the following conditions should not be held:

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

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

These juveniles should not be held at any facility unless they have been evaluated by a qualified medical and/or mental health professional (15 CCR 1142).

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

310.3.1 EMERGENCY MEDICAL CARE OF JUVENILES IN CUSTODY

Temporary Custody of Juveniles

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

In cases where injury or illness is life threatening and where lost minutes may be the deciding factor, the arresting investigator or the discovering investigator should administer first aid prior to the arrival of the paramedics. The juvenile will then be transported to a medical facility (15 CCR 1142).

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

- a. The Juvenile Court;
- b. The parent, guardian, or person standing in loco parentis, of the juvenile.

310.3.2 SUICIDE PREVENTION OF JUVENILES IN CUSTODY

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

310.4 CUSTODY OF JUVENILES

Investigators should take custody of a juvenile and temporarily hold the juvenile at the offices of the Orange County District Attorney when there is no other lawful and practicable alternative to temporary custody. Refer to the Child Abuse Policy § 313 for additional information regarding detaining a juvenile that is suspected of being a victim.

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

Any juvenile taken into custody shall be released to the care of the juvenile's parent or other responsible adult or transferred to a juvenile custody facility or to other authority as soon as practicable and in no event shall a juvenile be held beyond six hours from the time of his/her entry into the Orange County District Attorney's Office (34 USC § 11133; Welfare and Institutions Code § 207.1).

310.4.1 CUSTODY OF JUVENILE NON-OFFENDERS

Non-offenders taken into protective custody in compliance with the Child Abuse Policy § 313 should generally not be held at the offices of the Orange County District Attorney. Custodial arrangements should be made for non-offenders as soon as reasonably possible. Juvenile non-offenders shall not be held in secure custody (34 USC § 11133; Welfare and Institutions Code § 206).

Temporary Custody of Juveniles

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

310.4.2 CUSTODY OF JUVENILE STATUS OFFENDERS

Status offenders should generally be released by citation or with a warning rather than taken into temporary custody. However, investigators may take custody of a status offender if requested to do so by a parent or legal guardian in order to facilitate reunification (e.g., transported home, to a police station, or the OCDA office to await a parent). Status offenders shall not be held in secure custody (42 USC § 5633).

310.4.3 CUSTODY OF JUVENILE OFFENDERS

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

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

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

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

In all other cases the juvenile offender may be:

- a. Released upon warning or citation.
- b. Released to a parent or other responsible adult after processing at the Bureau.
- c. Referred to a probation officer for a decision regarding whether to transport the juvenile offender to a juvenile facility.
- d. Transported to his/her home or to the place where the juvenile offender was taken into custody (Welfare and Institutions Code § 207.2).

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

Temporary Custody of Juveniles

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

310.4.4 JUVENILE DETENTION ROOMS

The Orange County District Attorney's Office Bureau of Investigation does not provide juvenile detention rooms. Investigators placing juveniles in secure detention at another agency should comply with that agency's policies and procedures for releasing a minor into their custody.

310.5 ADVISEMENTS

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

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

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

Juveniles taken into custody for an offense shall immediately be advised (or at least within one hour from being taken into custody, if possible) that they may make three telephone calls: one call completed to his/her parent or guardian; one to a responsible relative or his/her employer; and another call completed to an attorney. The calls shall be at no expense to the juvenile when completed to telephone numbers within the local calling area. Juveniles should be asked whether they are a caregiver and provided two more phone calls in the same manner as provided to adults in the Custodial Searches and Phone Calls Policy § 900 (Welfare and Institutions Code § 627; Penal Code § 851.5).

310.6 NO-CONTACT REQUIREMENTS

Sight and sound separation shall be maintained between all juveniles and adults while in custody (42 USC § 5633; Welfare and Institutions Code § 207.1(d); Welfare and Institutions Code § 208; 15 CCR 1144). There should also be sight and sound separation between non-offenders and juvenile and status offenders.

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

Temporary Custody of Juveniles

310.7 TEMPORARY CUSTODY REQUIREMENTS

Members and supervisors assigned to monitor or process any juvenile shall ensure the following:

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

310.8 PERSONAL PROPERTY

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

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

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310.9 SECURE CUSTODY

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

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

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

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

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

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

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

Investigators will refer to the appropriate agency's policy that the minor is being held in, whether it be secured or non-secured detention.

310.10 SUICIDE ATTEMPT, DEATH OR SERIOUS INJURY OF A JUVENILE

The Bureau Chief will ensure procedures are in place to address the suicide attempt, death or serious injury of any juvenile held at the Orange County District Attorney's Office (15 CCR 1142; 15 CCR 1047). The procedures will address:

- a. Immediate notification of the on-duty supervisor, Bureau Chief or a designee.
- b. Notification of the parent, guardian or person standing in loco parentis, of the juvenile.
- c. Notification of the appropriate prosecutor.
- d. Notification of the County attorney.

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- e. Notification to the coroner.
- f. Notification of the juvenile court.
- g. In the case of a death, providing a report to the Attorney General under Government Code § 12525 within 10 calendar days of the death, and forwarding the same report to the Board of State and Community Corrections (BSCC) within the same time frame (15 CCR 1046).
- h. A medical and operational review of deaths pursuant to 15 CCR 1046.
 - 1. A copy of the review report shall be provided to BSCC within 60 days of the death (15 CCR 1046)
- i. Evidence preservation.

310.10.1 IN-CUSTODY DEATH PUBLICATION

The Bureau Chief or the authorized designee should ensure that specified information relating to an in-custody death of a juvenile is posted on the Bureau website as prescribed and within the time frames provided in Penal Code § 10008.

310.11 INTERVIEWING OR INTERROGATING JUVENILE SUSPECTS

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

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

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

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

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

310.12 MANDATORY RECORDING OF JUVENILES

Any interrogation of an individual under 18 years of age who is in custody and suspected of committing murder shall be audio and video recorded when the interview takes place at a department facility, jail, detention facility, or other fixed place of detention. The recording shall include the entire interview and a *Miranda* advisement preceding the interrogation (Penal Code § 859.5).

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

- a. Recording is not feasible because of exigent circumstances that are later documented in a report.

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- b. The person to be interrogated states that he or she will speak to a law enforcement investigator only if the interrogation is not electronically recorded. If feasible, that statement shall be electronically recorded. The requirement also does not apply if the person being interrogated indicates during interrogation that he or she will not participate in further interrogation unless electronic recording ceases. If the person being interrogated refuses to record any statement, the investigator shall document that refusal in writing.
- c. The custodial interrogation occurred in another state by law enforcement officers of that state, unless the interrogation was conducted with the intent to avoid the requirements of Penal Code § 859.5.
- d. The interrogation occurs when no member conducting the interrogation has a reason to believe that the individual may have committed murder. Continued custodial interrogation concerning that offense shall be electronically recorded if the interrogating member develops a reason to believe the individual committed murder.
- e. The interrogation would disclose the identity of a confidential informant or would jeopardize the safety of an officer, the individual being interrogated, or another individual. Such circumstances shall be documented in a report.
- f. A recording device fails despite reasonable maintenance and the timely repair or replacement is not feasible.
- g. The questions are part of a routine processing or booking, and are not an interrogation.
- h. The suspect is in custody for murder and the interrogation is unrelated to a murder. However, if any information concerning a murder is mentioned during the interrogation, the remainder of the interrogation shall be recorded.

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

310.13 RELEASE OF INFORMATION CONCERNING JUVENILES

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

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

310.14 JUVENILE CONTACTS AT SCHOOL FACILITIES

Absent exigent circumstances, investigators should make every reasonable effort to notify responsible school officials prior to contacting a student on campus while school is in session.

- 1. Reasonable efforts should be taken to coordinate with school officials to minimize disruption of school functions and maintain a low profile police presence when contacting a student.

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2. If practical, whenever circumstances warrant the temporary detention or interview of a juvenile student on campus, the investigator should:
 1. Take all reasonable steps to notify a parent, guardian or responsible adult, including those phone numbers on any contact card on file with the school or provided by the student. All efforts to make contact with parents should be documented.
 2. If efforts to contact a parent, guardian or responsible adult are unsuccessful, an interview with the juvenile may proceed without them. Upon the request of the juvenile, a school official or lawyer may be present during the interview in lieu of a parent.
 3. If contacted, the selected parent or other responsible adult should be permitted to be present during any interview or provide oral consent for the interview to proceed in their absence. A student may select a responsible school official in the absence of a parent or guardian.
 1. An adult suspect of child abuse or other criminal activity involving the juvenile, or an adult, who in the opinion of the investigator appears to be under the influence or otherwise unable or incompetent to exercise parental rights on behalf of the juvenile, will not be permitted to be present.
 2. If the investigator reasonably believes that exigent circumstances exist which would materially interfere with the investigator's ability to immediately interview the juvenile, the interview may proceed without the parent or other responsible adult. In such circumstances, the exigent circumstances should be set forth in a related report.
 4. Whenever circumstances warrant the temporary detention or interview of a juvenile student on a secondary school campus, the investigator should:
 - a. Take all reasonable steps to notify a parent, guardian or responsible adult, including those phone numbers listed on any contact card on file with the school or provided by the student. All efforts to make contact with parents should be documented.
 - b. If efforts to contact a parent, guardian or responsible adult are unsuccessful, an interview with the juvenile may proceed without them. Upon the request of the juvenile, a school official or lawyer may be present during the interview.

310.15 RELIGIOUS ACCOMMODATION

Juveniles have the right to the same religious accommodation as adults in temporary custody (see the Temporary Custody of Adults Policy).

Senior and Disability Victimization

311.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the investigation and reporting of suspected abuse of certain adults who may be more vulnerable than others. This policy also addresses mandatory notification for Orange County District Attorney members as required by law (Penal Code § 368.6).

The Orange County District Attorney is committed to providing equal protection and demonstrating respect for all persons regardless of age or disabilities, and to conscientiously enforcing all criminal laws protecting elders, and adults and children with disabilities, regardless of whether these crimes also carry civil penalties (Penal Code § 368.6)

311.1.1 DEFINITIONS

Definitions related to this policy include:

Abuse of an elder (age 65 or older) or dependent adult - Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; or the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering. Neglect includes self-neglect (Welfare and Institutions Code § 15610.05 et seq.; Penal Code § 368.5).

Dependent adult - An individual, regardless of whether the individual lives independently, between 18 and 64 years of age who has physical or mental limitations that restrict their ability to carry out normal activities or to protect their rights, including but not limited to persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. This also includes those admitted as inpatients to a 24-hour health facility, as defined in state law (Penal Code § 368; Welfare and Institutions Code § 15610.23).

Elder and dependent adult abuse - Any offense or attempted offense involving violence or neglect of an adult victim when committed by a person responsible for the adult's care, or any other act that would mandate reporting or notification to a social service agency or law enforcement (Penal Code § 368).

Senior and disability victimization - Means any of the following (Penal Code § 368.6):

- a. Elder and dependent adult abuse
- b. Unlawful interference with a mandated report
- c. Homicide of an elder, dependent adult, or other adult or child with a disability
- d. Sex crimes against elders, dependent adults, or other adults and children with disabilities
- e. Child abuse of children with disabilities
- f. Violation of relevant protective orders
- g. Hate crimes against persons with actual or perceived disabilities, including but not limited to disabilities caused by advanced age, or those associated with them

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- h. Domestic violence against elders, dependent adults, and adults and children with disabilities, including disabilities caused by advanced age

311.2 POLICY

The Orange County District Attorney will investigate all reported incidents of alleged elder and dependent adult abuse and ensure proper reporting and notification as required by law.

311.2.1 ARREST POLICY

It is the bureau policy to make arrests or to seek arrest warrants for elder and dependent adult abuse in accordance with Penal Code § 836 and, in the case of domestic violence, as allowed by Penal Code § 13701 (Penal Code § 368.6)

311.3 MANDATORY NOTIFICATION

Members of the Orange County District Attorney shall notify the local office of the California Department of Social Services (CDSS) APS agency of known, suspected, or alleged instances of abuse when they reasonably suspect, have observed, or have knowledge of an incident that reasonably appears to be abuse of an elder or dependent adult, or are told by an elder or dependent adult that the person has experienced abuse (Welfare and Institutions Code § 15630(b)).

Notification shall be made by telephone as soon as practicable. If notification is made by telephone, a written report shall also be provided within two working days as provided in Welfare and Institutions Code § 15630(b).

Employees can contact Orange County Adult Protective Services at (800) 451-5155 or visit their website [here](#).

Notification shall also be made to the following agencies as soon as practicable or as provided below (Welfare and Institutions Code § 15630):

- a. If the abuse occurred in a long-term care facility (not a state mental health hospital or a state developmental center), notification shall be made as follows (Welfare and Institutions Code § 15630 (b)(1)):
 - 1. If there is serious bodily injury, notification shall be made by telephone and, within two hours, a written report shall be made to the local ombudsman and the corresponding licensing agency.
 - 2. If the abuse is allegedly caused by a resident with dementia and there is no serious bodily injury, notification shall be made by a written report to the local ombudsman within 24 hours.
 - 3. If there is any other abuse in a long-term care facility (not a state mental health or a state developmental center), a written report shall be made to the local ombudsman and corresponding state licensing agency within 24 hours.
- b. The California Department of Public Health (DPH) shall be notified of all known or suspected abuse in a long-term care facility.

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- c. The CDSS shall be notified of all known or suspected abuse occurring in a residential care facility for the elderly or in an adult day program.
- d. If the abuse occurred in an adult day health care center, DPH and the California Department of Aging shall be notified.
- e. The Division of Medi-Cal Fraud and Elder Abuse shall be notified of all abuse that constitutes criminal activity in a long-term care facility.
- f. The District Attorney's office shall be notified of all cases of physical abuse and financial abuse in a long-term care facility.
- g. If the abuse occurred at a state mental hospital or a state developmental center, notification shall be made to the designated investigators of the California Department of State Hospitals or the California Department of Developmental Services as soon as practicable but no later than two hours after law enforcement becomes aware of the abuse (Welfare and Institutions Code § 15630(b)).
 - 1. When a report of abuse is received by the Bureau, investigation efforts shall be coordinated with the designated investigators of the California Department of State Hospitals or the California Department of Developmental Services (Welfare and Institutions Code § 15630(b)).
- h. If during an investigation it is determined that the elder or dependent adult abuse is being committed by a licensed health practitioner as identified in Welfare and Institutions Code § 15640(b), the appropriate licensing agency shall be immediately notified (Welfare and Institutions Code 15640(b)).
- i. When the Bureau receives a report of abuse, neglect, or abandonment of an elder or dependent adult alleged to have occurred in a long-term care facility, the licensing agency shall be notified by telephone as soon as practicable (Welfare and Institutions Code § 15640(e)).

The appropriate unit supervisor is responsible for ensuring that proper notifications have occurred to the District Attorney's Office and any other regulatory agency that may be applicable based upon where the abuse took place (e.g., care facility, hospital) per Welfare and Institutions Code § 15630(b).

Notification is not required for a person who was merely present when a person self-administered a prescribed aid-in-dying drug or a person prepared an aid-in-dying drug so long as the person did not assist the individual in ingesting the aid-in-dying drug (Health and Safety Code § 443.14; Health and Safety Code § 443.18).

Failure to report or impeding or inhibiting a report of abuse of an elder or dependent adult is a misdemeanor (Welfare and Institutions Code §15630(h)).

311.3.1 NOTIFICATION PROCEDURE

Notification should include the following information, if known (Welfare and Institutions Code § 15630(e)):

- a. The name of the person making the report.
- b. The name and age of the elder or dependent adult.
- c. The present location of the elder or dependent adult.

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- d. The names and addresses of family members or any other adult responsible for the care of the elder or dependent adult.
- e. The nature and extent of the condition of the elder or dependent adult.
- f. The date of incident.
- g. Any other information, including information that led the person to suspect elder or dependent adult abuse.

311.4 INVESTIGATIONS AND REPORTING

All reported or suspected cases of elder and dependent adult abuse require investigation and a report, even if the allegations appear unfounded or unsubstantiated (Penal Code § 368.6).

Investigations and reports related to suspected cases of elder and dependent adult abuse should address, as applicable:

1. The overall basis for the contact. This should be done by the investigating investigator in all circumstances where a suspected elder and dependent adult abuse victim is contacted.
2. Any relevant statements the victim may have made and to whom he/she made the statements.
3. If a person is taken into protective custody, the reasons, the name and title of the person making the decision, and why other alternatives were not appropriate.
4. Documentation of any visible injuries or any injuries identified by the victim. This should include photographs of such injuries, if practicable.
5. Whether the victim was transported for medical treatment or a medical examination.
6. Whether the victim identified a household member as the alleged perpetrator, and a list of the names of any other potential victims or witnesses who may reside in the residence.
7. Identification of any prior related reports or allegations of abuse, including other jurisdictions, as reasonably known.
8. Previous addresses of the victim and suspect.
9. Other potential witnesses who have not yet been interviewed, such as relatives or others close to the victim's environment.
10. Witness and suspect statements if available.
11. Review of all portable audio/video recorders, devices, and other available video.
12. Call history related to the elder or dependent adult including calls from mandated reporters or other individuals.
13. Whether the abuse is related to a disability-bias hate crime and related bias motivations (Penal Code § 368.6).
14. Results of investigations shall be provided to those agencies (Adult Protective Services (APS), long-term ombudsman) that referred or reported the elder or dependent adult abuse (Welfare and Institutions Code § 15640(f)).
15. Whether a death involved the End of Life Option Act:
 1. Whether or not assistance was provided to the person beyond that allowed by law (Health and Safety Code § 443.14).

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2. Whether an individual knowingly altered or forged a request for an aid-in-dying drug to end a person's life without his/her authorization, or concealed or destroyed a withdrawal or rescission of a request for an aid-in-dying drug (Health and Safety Code § 443.17).
3. Whether coercion or undue influence was exerted on the person to request or ingest an aid-in-dying drug or to destroy a withdrawal or rescission of a request for such medication (Health and Safety Code § 443.17).
4. Whether an aid-in-dying drug was administered to a person without his/her knowledge or consent (Health and Safety Code § 443.17).

Any unexplained death of an adult who was in the care of a guardian or caretaker should be considered as potential elder or dependent adult abuse and investigated similarly.

An unexplained or suspicious death of an elder, dependent adult, or other adult or child with a disability should be treated as a potential homicide until a complete investigation including an autopsy is completed, and it should not be assumed that the death of an elder or person with a disability is natural simply because of the age or disability of the deceased (Penal Code § 368.6(c)(18)).

311.4.1 ADDITIONAL INVESTIGATIVE CONSIDERATIONS

The following factors as provided in Penal Code § 368.6 should be considered when investigating incidents of elder and dependent adult abuse:

- a. Elder and dependent adult abuse, sex crimes, child abuse, domestic violence, and any other criminal act, when committed in whole or in part because of the victim's actual or perceived disability, including disability caused by advanced age, is also a hate crime (Penal Code § 368.6).
- b. Senior and disability victimization crimes are also domestic violence subject to the mandatory arrest requirements of Penal Code § 836 if they meet the elements described in Penal Code § 273.5, including but not limited to a violation by a caretaker or other person who is or was a cohabitant of the victim, regardless of whether the cohabitant is or was a relative of, or in an intimate personal relationship with, the victim (Penal Code § 368.6(c)(10)).
- c. Many victims of sexual assault and other sex crimes delay disclosing the crimes for reasons including but not limited to shame, embarrassment, self-doubt, fear of being disbelieved, and fear of retaliation by the perpetrator or others (Penal Code § 368.6(c)(11)).
- d. Victims and witnesses with disabilities, including cognitive and communication disabilities, can be highly credible witnesses when interviewed appropriately by trained officers or other trained persons (Penal Code § 368.6(c)(14)).

311.5 INVESTIGATIONS

Investigators should be available to investigate cases of elder and dependent adult abuse. These investigators should:

- a. Conduct interviews in appropriate interview facilities.
- b. Be familiar with forensic interview techniques specific to elder and dependent adult abuse investigations.

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- c. Present all cases of alleged elder and dependent adult abuse to the prosecutor for review.
- d. Coordinate with other enforcement agencies, social service agencies and facility administrators as needed (Welfare and Institutions Code § 15650).
- e. Provide referrals to therapy services, victim advocates, guardians and support for the victim and family as appropriate.
 - 1. Ensure victims of sex crimes know their right to have a support person of their choice present at all times during an interview or contact (Penal Code § 368.6).
 - 2. Referrals to the crime victim liaison as appropriate for victims requiring further assistance or information regarding benefits from crime victim resources.
- f. Participate in or coordinate with multidisciplinary investigative teams as applicable (Welfare and Institutions Code § 15610.55).
- g. Make reasonable efforts to determine whether any person committed unlawful interference in a mandated report.

311.6 PROTECTIVE CUSTODY

Before taking an elder or dependent adult abuse victim into protective custody when facts indicate the adult may not be able to care for him/herself, the investigator should make reasonable attempts to contact APS. Generally, removal of an adult abuse victim from his/her family, guardian, or other responsible adult should be left to the welfare authorities when they are present or have become involved in an investigation.

Generally, members of this bureau should remove an elder or dependent adult abuse victim from his/her family or guardian without a court order only when no other effective alternative is reasonably available and immediate action reasonably appears necessary to protect the victim. Prior to taking an elder or dependent adult abuse victim into protective custody, the investigator should take reasonable steps to deliver the adult to another qualified legal guardian, unless it reasonably appears that the release would endanger the victim or result in abduction. If this is not a reasonable option, the investigator shall ensure that the adult is delivered to APS.

Whenever practicable, the investigator should inform a supervisor of the circumstances prior to taking an elder or dependent adult abuse victim into protective custody. If prior notification is not practicable, investigators should contact a supervisor promptly after taking the adult into protective custody.

When elder or dependent adult abuse victims are under state control, have a state-appointed guardian, or there are other legal holdings for guardianship, it may be necessary or reasonable to seek a court order on behalf of the adult victim to either remove the adult from a dangerous environment (protective custody) or restrain a person from contact with the adult.

311.6.1 EMERGENCY PROTECTIVE ORDERS

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In any situation which an investigator reasonably believes that an elder or dependent adult is in immediate and present danger of abuse based on an allegation of a recent incident of abuse or threat of abuse (other than financial abuse alone), the investigator may seek an emergency protective order against the person alleged to have committed or threatened such abuse (Family Code § 6250(d)).

311.6.2 VERIFICATION OF PROTECTIVE ORDER

Whenever an investigator verifies that a relevant protective order has been issued, the investigator shall make reasonable efforts to determine if the order prohibits the person from possession of firearms or requires the relinquishment of firearms, and if the order does so, the investigator shall make reasonable efforts to (Penal Code § 368.6(c)(19)):

- a. Inquire whether the restrained person possesses firearms. The investigator should make this effort by asking the restrained person and the protected person.
- b. Query the California Law Enforcement Telecommunications System to determine if any firearms are registered to the restrained person.
- c. Receive or seize prohibited firearms located in plain view or pursuant to a consensual or other lawful search in compliance with Penal Code § 18250 et seq. and in accordance with bureau procedures.

311.7 INTERVIEWS

311.7.1 PRELIMINARY INTERVIEWS

Absent extenuating circumstances or impracticality, investigators should audio record the preliminary interview with a suspected elder or dependent adult abuse victim. Investigators should avoid multiple interviews with the victim and should attempt to gather only the information necessary to begin an investigation. When practicable, investigating investigators should defer interviews until a person who is specially trained in such interviews is available.

311.7.2 DETAINING VICTIMS FOR INTERVIEWS

An investigator should not detain an adult involuntarily who is suspected of being a victim of abuse solely for the purpose of an interview or physical exam without his/her consent or the consent of a guardian unless one of the following applies:

1. Exigent circumstances exist, such as:
 1. A reasonable belief that medical issues of the adult need to be addressed immediately.
 2. A reasonable belief that the adult is or will be in danger of harm if the interview or physical exam is not immediately completed.
 3. The alleged offender is a family member or guardian and there is reason to believe the adult may be in continued danger.
2. A court order or warrant has been issued.

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311.7.3 INTERVIEWS WITH A PERSON WITH DEAFNESS OR HEARING LOSS

An investigator who is interviewing a victim or witness who reports or demonstrates deafness or hearing loss should secure the services of a qualified interpreter (as defined by Evidence Code § 754) prior to the start of the interview (Penal Code § 368.6) (see the Communications with Persons with Disabilities Policy for additional guidance).

311.8 MEDICAL EXAMINATIONS

When an elder or dependent adult abuse investigation requires a medical examination, the investigating investigator should obtain consent for such examination from the victim, guardian, agency, or entity having legal custody of the adult. The investigator should also arrange for the adult's transportation to the appropriate medical facility.

In cases where the alleged offender is a family member, guardian, agency, or entity having legal custody and is refusing to give consent for the medical examination, investigators should notify a supervisor before proceeding. If exigent circumstances do not exist or if state law does not provide for investigators to take the adult for a medical examination, the supervisor should consider other government agencies or services that may obtain a court order for such an examination.

311.9 DRUG-ENDANGERED VICTIMS

A coordinated response by law enforcement and social services agencies is appropriate to meet the immediate and longer-term medical and safety needs of an elder or dependent adult abuse victim who has been exposed to the manufacturing, trafficking, or use of narcotics.

311.9.1 SUPERVISOR RESPONSIBILITIES

The supervisor should:

- a. Work with professionals from the appropriate agencies, including APS, other law enforcement agencies, medical service providers and local prosecutors, to develop community specific procedures for responding to situations where there are adult abuse victims endangered by exposure to methamphetamine labs or the manufacture and trafficking of other drugs.
- b. Activate any available interagency response when an investigator notifies the Bureau supervisor that he/she has responded to a drug lab or other narcotics crime scene where an adult abuse victim is present or where evidence indicates that an adult abuse victim lives.
- c. Develop a report format or checklist for use when investigators respond to drug labs or other narcotics crime scenes. The checklist will help investigators document the environmental, medical, social and other conditions that may affect the adult.

311.9.2 INVESTIGATOR RESPONSIBILITIES

Investigators responding to a drug lab or other narcotics crime scene where an elder or dependent adult abuse victim is present or where there is evidence that an elder or dependent adult abuse victim lives should:

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- a. Document the environmental, medical, social, and other conditions of the adult, using photography as appropriate and the checklist or form developed for this purpose.
- b. Notify the Bureau of Investigation supervisor so an interagency response can begin.

311.10 STATE MANDATES AND OTHER RELEVANT LAWS

California requires or permits the following:

311.10.1 REPORTING RESPONSIBILITIES

Reporting responsibilities by supervisor:

- a. Providing a copy of the adult abuse report to the APS, ombudsman or other agency as applicable within two working days or as required by law (Welfare and Institutions Code Section § 15630; Welfare and Institutions Code Section § 15640 (c)).
- b. Retaining the original adult abuse report with the initial case file.

Vehicle Pursuits

312.1 PURPOSE AND SCOPE

Vehicle pursuits expose innocent citizens, law enforcement officers and fleeing violators to the risk of serious injury or death. The primary purpose of this policy is to provide investigators with guidance in balancing the safety of the public and themselves against law enforcement's duty to apprehend violators of the law. Another purpose of this policy is to reduce the potential for pursuit-related collisions. Vehicular pursuits require investigators to exhibit a high degree of common sense and sound judgment. Investigators must not forget that the immediate apprehension of a suspect is generally not more important than the safety of the public and pursuing investigators.

Deciding whether to pursue a motor vehicle is a critical decision that must be made quickly and under difficult and unpredictable circumstances. In recognizing the potential risk to public safety created by vehicular pursuits, no investigator or supervisor shall be criticized or disciplined for deciding not to engage in a vehicular pursuit because of the risk involved. This includes circumstances where Bureau policy would permit the initiation or continuation of the pursuit. It is recognized that vehicular pursuits are not always predictable and decisions made pursuant to this policy will be evaluated according to the totality of the circumstances reasonably available at the time of the pursuit.

Investigators must remember that the most important factors to the successful conclusion of a pursuit are proper self-discipline and sound professional judgment. Investigator's conduct during the course of a pursuit must be objectively reasonable; that is, what a reasonable investigator would do under the circumstances. An unreasonable individual's desire to apprehend a fleeing suspect at all costs has no place in professional law enforcement.

312.1.1 VEHICLE PURSUIT DEFINED

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

312.1.2 POLICY

Pursuit of Suspects in Bureau Vehicles

- a. It is the policy of the Bureau to protect all persons' lives and property when enforcing the law.
- b. Further it is the policy of the Bureau that it is generally not a first responder law enforcement agency, and pursuits shall be avoided unless the terms and procedures set out in this policy are considered and warrant a pursuit.

Vehicle Pursuits

- c. No assignment shall be of such importance, and no task shall be expedited with such speed that the principals of safety become secondary.
- d. The Bureau's emergency vehicles assigned to its investigators are unmarked vehicles equipped with a red light and siren used for law enforcement purpose.

312.2 INVESTIGATOR RESPONSIBILITIES

It shall be the policy of this Bureau that a vehicle pursuit shall be conducted only with red light and siren as required by Vehicle Code § 21055 for exemption from compliance with the rules of the road. The following policy is established to provide investigators with guidelines for driving with due regard and caution for the safety of all persons using the highway as required by Vehicle Code § 21056.

312.2.1 WHEN TO INITIATE A PURSUIT

Investigators are authorized to initiate a pursuit when it is reasonable to believe that a suspect is attempting to evade arrest or detention by fleeing in a vehicle.

The following factors individually and collectively shall be considered in deciding whether to initiate a pursuit:

- a. Seriousness of the known or reasonably suspected crime and its relationship to community safety.
- b. The importance of protecting the public and balancing the known or reasonably suspected offense and the apparent need for immediate capture against the risks to investigators, innocent motorists and others.
- c. Apparent nature of the fleeing suspects (e.g., whether the suspects represent a serious threat to public safety).
- d. The identity of the suspects has been verified and there is comparatively minimal risk in allowing the suspects to be apprehended at a later time.
- e. Safety of the public in the area of the pursuit, including the type of area, time of day, the amount of vehicular and pedestrian traffic and the speed of the pursuit relative to these factors.
- f. Pursuing investigators familiarity with the area of the pursuit, the quality of radio communications between the pursuing units and the dispatcher/supervisor and the driving capabilities of the pursuing investigators under the conditions of the pursuit.
- g. Weather, traffic and road conditions that substantially increase the danger of the pursuit beyond the worth of apprehending the suspect.
- h. Performance capabilities of the vehicles used in the pursuit in relation to the speeds and other conditions of the pursuit.
- i. Vehicle speeds.
- j. Other persons in or on the pursued vehicle (e.g., passengers, co-offenders and hostages).
- k. Availability of other resources such as helicopter assistance.
- l. The Bureau unit is carrying passengers other than Bureau investigators. Pursuits should not be undertaken with a prisoner in the Bureau unit.

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312.2.2 WHEN TO TERMINATE A PURSUIT

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

The factors listed in When to Initiate a Pursuit § 311.2.1 are expressly included herein and will apply equally to the decision to discontinue as well as the decision to initiate a pursuit. Investigators and supervisors must objectively and continuously weigh the seriousness of the offense against the potential danger to innocent motorists and themselves when electing to continue a pursuit. In the context of this policy, the term “terminate” shall be construed to mean discontinue or to stop chasing the fleeing vehicle.

In addition to the factors listed in When to Initiate a Pursuit § 311.2.1, the following factors should also be considered in deciding whether to terminate a pursuit:

- a. Distance between the pursuing investigators and the fleeing vehicle is so great that further pursuit would be futile or require the pursuit to continue for an unreasonable time and/or distance.
- b. Pursued vehicle's location is no longer definitely known.
- c. Investigator's pursuit vehicle sustains any type of damage that renders it unsafe to drive.
- d. Extended pursuits of violators for misdemeanors not involving violence or risk of serious harm (independent of the pursuit) are discouraged.
- e. There are hazards to uninvolved bystanders or motorists.
- f. If the identity of the offender is known and it does not reasonably appear that the need for immediate capture outweighs the risks associated with continuing the pursuit, investigators should strongly consider discontinuing the pursuit and apprehending the offender at a later time.
- g. Pursuit is terminated by a supervisor.

312.2.3 SPEED LIMITS

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

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

- a. Pursuit speeds have become unreasonably unsafe for the surrounding conditions.
- b. Pursuit speeds have exceeded the driving ability of the investigator.

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- c. Pursuit speeds are beyond the capabilities of the pursuit vehicle thus making its operation unsafe.

312.3 PURSUIT UNITS

Pursuit units should be limited to three vehicles (two units and a supervisor); however, the number of units involved will vary with the circumstances. An investigator or supervisor may request additional units to join a pursuit if, after assessing the factors outlined above, it appears that the number of investigators involved would be insufficient to safely arrest the suspect(s). All other investigators should stay out of the pursuit, but should remain alert to its progress and location. Any investigator who drops out of a pursuit may then, if necessary, proceed to the termination point at legal speeds, following the appropriate rules of the road.

312.3.1 VEHICLES WITHOUT EMERGENCY EQUIPMENT

Vehicles not equipped with red light and siren are generally prohibited from initiating or joining in any pursuit. Investigators in such vehicles, however, may become involved in emergency activities involving serious crimes or life threatening situations. Those investigators should terminate their involvement in any pursuit immediately upon arrival of a sufficient number of emergency police vehicles or any police helicopter. The exemptions provided by Vehicle Code § 21055 do not apply to investigators using vehicles without emergency equipment.

312.3.2 PRIMARY UNIT RESPONSIBILITIES

The initial pursuing unit will be designated as the primary pursuit unit and will be responsible for the conduct of the pursuit unless it is unable to remain reasonably close enough to the violator's vehicle. The primary responsibility of the investigator initiating the pursuit is the apprehension of the suspect(s) without unreasonable danger to him/herself or other persons.

Notify Control One that a vehicle pursuit has been initiated and as soon as practicable provide information including, but not limited to:

- a. Reason for the pursuit.
- b. Location and direction of travel.
- c. Speed of the fleeing vehicle.
- d. Description of the fleeing vehicle and license number, if known.
- e. Number of known occupants.
- f. The identity or description of the known occupants.
- g. Information concerning the use of firearms, threat of force, injuries, hostages or other unusual hazards.

Unless relieved by a supervisor or secondary unit, the investigator in the primary unit shall be responsible for the broadcasting of the progress of the pursuit. Unless practical circumstances indicate otherwise, and in order to concentrate on pursuit driving, the primary investigator should relinquish the responsibility of broadcasting the progress of the pursuit to a secondary unit or aircraft joining the pursuit.

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312.3.3 SECONDARY UNIT RESPONSIBILITIES

The second investigator in the pursuit is responsible for the following:

- a. The investigator in the secondary unit should immediately notify Control One of entry into the pursuit.
- b. Remain a safe distance behind the primary unit unless directed to assume the role of primary investigator, or if the primary unit is unable to continue the pursuit.
- c. The secondary investigator should be responsible for broadcasting the progress of the pursuit unless the situation indicates otherwise.

312.3.4 PURSUIT DRIVING TACTICS

The decision to use specific driving tactics requires the same assessment of considerations outlined in the factors to be considered concerning pursuit initiation and termination. The following are tactics for units involved in the pursuit:

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

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312.3.5 TACTICS/PROCEDURES FOR UNITS NOT INVOLVED IN THE PURSUIT

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

Non-pursuing personnel needed at the termination of the pursuit should respond in a non-emergency manner, observing the rules of the road.

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

312.3.6 PURSUIT TRAILING

In the event the initiating unit from this Bureau either relinquishes control of the pursuit to another unit or jurisdiction, that initiating unit may, with permission of a supervisor, trail the pursuit to the termination point in order to provide necessary information and assistance for the arrest of the suspect(s).

The term trail means to follow the path of the pursuit at a safe speed while obeying all traffic laws and without activating emergency equipment. If the pursuit is at a slow rate of speed, the trailing unit will maintain sufficient distance from the pursuit units so as to clearly indicate an absence of participation in the pursuit.

312.3.7 AIR SUPPORT ASSISTANCE

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

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

312.4 SUPERVISORY CONTROL AND RESPONSIBILITY

It is the policy of this Bureau that available supervisory and management control will be exercised over all vehicle pursuits involving investigators from this Bureau.

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

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- a. Upon becoming aware of a pursuit, immediately ascertaining all reasonably available information to continuously assess the situation and risk factors associated with the pursuit in order to ensure that the pursuit is conducted within established Bureau guidelines.
- b. Engaging in the pursuit, when appropriate, to provide on-scene supervision.
- c. Exercising management and control of the pursuit even if not engaged in it.
- d. Ensuring that no more than the number of required police units needed are involved in the pursuit under the guidelines set forth in this policy.
- e. Directing that the pursuit be terminated if, in his/her judgment, it is unjustified to continue the pursuit under the guidelines of this policy.
- f. Ensuring that aircraft are requested if available.
- g. Ensuring that the proper radio channel is being used.
- h. Ensuring the notification and/or coordination of outside agencies if the pursuit either leaves or is likely to leave the jurisdiction of this Bureau.
- i. Controlling and managing OCDA units when a pursuit enters another jurisdiction.
- j. Preparing post-pursuit critique and analysis of the pursuit for training purposes.

312.5 COMMUNICATIONS

The investigator initiating a pursuit shall immediately notify Control One (Red Channel) by radio that they are in pursuit.

312.5.1 LOSS OF PURSUED VEHICLE

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

312.6 INTER-JURISDICTIONAL CONSIDERATIONS

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

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312.6.1 ASSUMPTION OF PURSUIT BY ANOTHER AGENCY

Units originally involved will discontinue the pursuit when advised that another agency has assumed the pursuit and assistance of the Orange County District Attorney Bureau of Investigation is no longer needed. Upon discontinuing the pursuit, the primary unit may proceed upon request, with or at the direction of a supervisor, to the termination point to assist in the investigation.

The role and responsibilities of investigators at the termination of a pursuit initiated by this Bureau shall be coordinated with appropriate consideration of the units from the agency assuming the pursuit.

312.7 PURSUIT INTERVENTION

Pursuit intervention is an attempt to terminate the ability of a suspect to continue to flee in a motor vehicle through tactical application of technology, road spikes, blocking, boxing, PIT (Pursuit Intervention Technique), ramming or roadblock procedures. In this context, ramming shall be construed to mean maneuvering the bureau unit into contact with the pursued vehicle to mechanically disable or forcibly position it such that further flight is not possible or practicable.

Absent exigent circumstances where the loss of life or serious injury is imminent, intervention tactics are prohibited.

312.8 REPORTING REQUIREMENTS

The following reports should be completed upon conclusion of all pursuits:

- a. The primary investigator should complete appropriate crime/arrest reports.
- b. The Bureau supervisor shall ensure that an Allied Agency Vehicle Pursuit Report (CHP form 187A) is filed with the CHP not later than 30 days following the pursuit (Vehicle Code § 14602.1). The primary investigator should complete as much of the required information on the form as is known and forward the report to the Administrative commander for review and distribution.
- c. After first obtaining the available information, a supervisor shall promptly complete a Supervisor's Log, briefly summarizing the pursuit, and submit it to his/her commander. This log should minimally contain the following information:
 1. Date and time of pursuit.
 2. Length of pursuit.
 3. Involved units and investigators.
 4. Initial reason for pursuit.
 5. Starting and termination points.
 6. Disposition (arrest, citation), including arrestee information if applicable.
 7. Injuries and/or property damage.
 8. Medical treatment.
 9. Name of supervisor at scene.
 10. A preliminary determination whether the pursuit appears to be in compliance with this policy and whether additional review or follow-up is warranted.

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312.8.1 REGULAR AND PERIODIC PURSUIT TRAINING

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

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

312.8.2 POLICY REVIEW

Each sworn member of this Bureau shall certify in writing that they have received, read and understand this policy initially and upon any amendments. The POST attestation form, or an equivalent form, may be used to document the compliance and should be retained in the member's training file.

312.9 APPLICATION OF VEHICLE PURSUIT POLICY

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

312.10 TRAFFIC STOP

- a. A traffic stop is the process in which an investigator, while on-duty in an emergency vehicle, activates his/her red light, with or without use of a siren, based upon reasonable suspicion or probable cause that a public offense has been or is being committed, causes the operator of a motor vehicle to stop their vehicle in compliance with the demands of the Vehicle Code.
- b. Traffic stops may be used by an investigator only in the following circumstances and in compliance with applicable Vehicle Code provisions.
 1. To make an arrest.
 2. To assist other law enforcement agencies in a joint operation.
 3. To apprehend a dangerous felon.
 4. In life threatening or serious injury situations when the purpose is for the protection and preservation of life.
 5. To serve a search warrant, arrest warrant or other lawful process.
- c. Initiating a traffic stop without the presence of a marked law enforcement vehicle, or back-up law enforcement personnel should be avoided whenever possible.

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Discriminatory Harassment

313.1 PURPOSE AND SCOPE

The purpose of this policy is to prevent Orange County District Attorney Office members from being subjected to discriminatory harassment, including sexual harassment and retaliation. Nothing in this policy is intended to create a legal or employment right or duty that is not created by law.

313.2 POLICY

The Orange County District Attorney is an equal opportunity employer and is committed to creating and maintaining a work environment that is free of all forms of discriminatory harassment, including sexual harassment and retaliation (Government Code § 12940(k); 2 CCR 11023). The Orange County District Attorney Bureau of Investigation will not tolerate discrimination against a member in hiring, promotion, discharge, compensation, fringe benefits and other privileges of employment. The Bureau will take preventive and corrective action to address any behavior that violates this policy or the rights it is designed to protect. Refer to the County of Orange Equal Employment Opportunity and Anti-Harassment Policy and Procedure for further information.

The nondiscrimination policies of the Bureau may be more comprehensive than state or federal law. Conduct that violates this policy may not violate state or federal law but still could subject a member to discipline.

313.3 DEFINITIONS

Definitions related to this policy include:

313.3.1 DISCRIMINATION

The Bureau prohibits all forms of discrimination, including any employment-related action by a member that adversely affects an applicant or member and is based on the person's legally protected status, whether actual or perceived, including race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, veteran status, citizenship status, use of family medical leave, military leave or any other legally protected classification under state or federal law.

Discriminatory harassment, including sexual harassment, is verbal or physical conduct that demeans or shows hostility or aversion toward an individual based upon that individual's protected class. It has the effect of interfering with an individual's work performance or creating a hostile or abusive work environment.

Conduct that may, under certain circumstances, constitute discriminatory harassment, can include making derogatory comments, crude and offensive statements or remarks; making slurs or off-color jokes, stereotyping; engaging in threatening acts; making indecent gestures, pictures, cartoons, posters or

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material; making inappropriate physical contact; or using written material or Bureau equipment and/or systems to transmit or receive offensive material, statements or pictures. Such conduct is contrary to Bureau policy and to a work environment that is free of discrimination.

313.3.2 SEXUAL HARASSMENT

The Bureau prohibits all forms of discrimination and discriminatory harassment, including sexual harassment. It is unlawful to harass an applicant or a member because of that person's sex.

Sexual harassment includes, but is not limited to, unwelcome sexual advances, requests for sexual favors or other verbal, visual or physical conduct of a sexual nature when:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of employment, position or compensation.
- b. Submission to, or rejection of, such conduct is used as the basis for any employment decisions affecting the member.
- c. Such conduct has the purpose or effect of substantially interfering with a member's work performance or creating an intimidating, hostile, or offensive work environment.

313.3.3 ADDITIONAL CONSIDERATIONS

Discrimination and discriminatory harassment do not include actions that are in accordance with established rules, principles or standards, including:

- a. Acts or omission of acts based solely upon bona fide occupational qualifications under the Equal Employment Opportunity Commission (EEOC) and the California Civil Rights Council guidelines.
- b. Bona fide requests or demands by a supervisor that a member improve his/her work quality or output, that the member report to the job site on time, that the member comply with County or Bureau rules or regulations, or any other appropriate work-related communication between supervisor and member.

313.3.4 RETALIATION

Retaliation is treating a person differently or engaging in acts of reprisal or intimidation against the person because he/she has engaged in protected activity, filed a charge of discrimination, participated in an investigation or opposed a discriminatory practice. Retaliation will not be tolerated.

313.4 RESPONSIBILITIES

This policy applies to all Bureau personnel. All members shall follow the intent of these guidelines in a manner that reflects Bureau policy, professional law enforcement standards and the best interest of the Bureau and its mission.

Members are encouraged to promptly report any discriminatory, retaliatory or harassing conduct or known violations of this policy to a supervisor, manager, Agency or Department of Human Resources staff, or the

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Human Resources Services/EEO Access Office. Any member who is not comfortable with reporting violations of this policy to his/her immediate supervisor may bypass the chain of command and make the report to a higher ranking supervisor or manager. Complaints may also be filed with the Equal Employment Opportunity Commission (EEOC) and/or California Department of Fair Employment and Housing (DFEH).

Any member who believes, in good faith, that he/she has been discriminated against, harassed or subjected to retaliation, or who has observed harassment or discrimination, is encouraged to promptly report such conduct in accordance with the procedures set forth in this policy.

Supervisors and managers receiving information regarding alleged violations of this policy shall determine if there is any basis for the allegation and shall proceed with resolution as stated below.

313.4.1 SUPERVISOR RESPONSIBILITIES

The responsibilities of each supervisor and manager shall include, but are not limited to:

- a. Continually monitoring the work environment and striving to ensure that it is free from all types of unlawful discrimination, including harassment or retaliation.
- b. Taking prompt, appropriate action within their work units to avoid and minimize the incidence of any form of discrimination, harassment or retaliation.
- c. Ensuring that his/her subordinates understand their responsibilities under this policy.
- d. Ensuring that members who make complaints or who oppose any unlawful employment practices are protected from retaliation and that such matters are kept confidential to the extent possible.
- e. Making a timely determination regarding the substance of any allegation based upon all available facts.
- f. Notifying the Bureau Chief or Human Resources in writing of the circumstances surrounding any reported allegations or observed acts of discrimination, harassment or retaliation no later than the next business day.

313.4.2 SUPERVISOR'S ROLE

Because of differences in individual values, supervisors and managers may find it difficult to recognize that their behavior or the behavior of others is discriminatory, harassing or retaliatory. Supervisors and managers shall be aware of the following considerations:

- a. Behavior of supervisors and managers should represent the values of the Bureau and professional law enforcement standards.
- b. False or mistaken accusations of discrimination, harassment or retaliation can have negative effects on the careers of innocent members.

Nothing in this section shall be construed to prevent supervisors or managers from discharging supervisory or management responsibilities, such as determining duty assignments, evaluating or counseling members or issuing discipline, in a manner that is consistent with established procedures.

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313.4.3 QUESTIONS OR CLARIFICATION

Members with questions regarding what constitutes discrimination, sexual harassment or retaliation are encouraged to contact a supervisor, manager, Agency or Department of Human Resources staff, Human Resources Services/EEO Access Office, the Equal Employment Housing Commission (EEOC) and/or California Department of Fair Employment and Housing (DFEH), for further information, direction or clarification.

313.5 INVESTIGATION OF COMPLAINTS

Various methods of resolution exist. During the pendency of any such investigation, the supervisor of the involved member should take prompt and reasonable steps to mitigate or eliminate any continuing abusive or hostile work environment. It is the policy of the Bureau that all complaints of discrimination, retaliation or harassment shall be fully documented and promptly and thoroughly investigated.

313.5.1 SUPERVISORY RESOLUTION

Members who believe they are experiencing discrimination, harassment or retaliation should be encouraged to inform the individual that his/her behavior is unwelcome, offensive, unprofessional or inappropriate. However, if the member feels uncomfortable or threatened or has difficulty expressing his/her concern, or if this does not resolve the concern, assistance should be sought from a supervisor or manager who is a rank higher than the alleged transgressor.

313.5.2 FORMAL INVESTIGATION

If the complaint cannot be satisfactorily resolved through the process described above, a formal investigation will be conducted.

The person assigned to investigate the complaint will have full authority to investigate all aspects of the complaint. Investigative authority includes access to records and the cooperation of any members involved. No influence will be used to suppress any complaint and no member will be subject to retaliation or reprisal for filing a complaint, encouraging others to file a complaint or for offering testimony or evidence in any investigation.

Formal investigation of the complaint will be confidential to the extent possible and will include, but is not limited to, details of the specific incident, frequency and dates of occurrences and names of any witnesses. Witnesses will be advised regarding the prohibition against retaliation, and that a disciplinary process, up to and including termination, may result if retaliation occurs.

Members who believe they have been discriminated against, harassed or retaliated against because of their protected status, are encouraged to follow the chain of command but may also file a complaint directly with a supervisor, manager, Agency or Department of Human Resources staff, or the Human Resources Services/EEO Access Office. Members may also make complaints to the Equal Employment Opportunity Commission (EEOC) and/or California Department of Fair Employment and Housing (DFEH).

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313.5.3 ALTERNATIVE COMPLAINT PROCESS

No provision of this policy shall be construed to prevent any member from seeking legal redress outside the Bureau. Members who believe that they have been harassed, discriminated against, or retaliated against are entitled to bring complaints of employment discrimination to federal, state, and/or local agencies responsible for investigating such allegations. Specific time limitations apply to the filing of such charges. Members are advised that proceeding with complaints under the provisions of this policy does not in any way affect those filing requirements.

313.6 DOCUMENTATION OF COMPLAINTS

All complaints or allegations shall be thoroughly documented on the [Discrimination / Retaliation Complaint Form](#) found on the Orange County Intranet. [Instructions](#) for filing complaints can also be found on the Orange County Intranet.

313.6.1 NOTIFICATION OF DISPOSITION

The complainant and/or victim will be notified in writing of the disposition of the investigation and the actions taken to remedy or address the circumstances giving rise to the complaint.

Specific types of dispositions are explained in detail in the Personnel Complaint Policy § 1005.

313.7 TRAINING

All new members shall be provided with a copy of this policy as part of their orientation. The policy shall be reviewed with each new member. The member shall certify by signing the prescribed form that he/she has been advised of this policy, is aware of and understands its contents and agrees to abide by its provisions during his/her term with the Bureau.

All members shall receive annual training on the requirements of this policy and shall certify by signing the prescribed form that they have reviewed the policy, understand its contents and agree that they will continue to abide by its provisions.

313.7.1 STATE-REQUIRED TRAINING

Human Resources should ensure that employees receive the required state training and education regarding sexual harassment, prevention of abusive conduct, and harassment based on gender identity, gender expression, and sexual orientation as follows (Government Code § 12950.1; 2 CCR 11024):

- a. Supervisory employees shall receive two hours of classroom or other effective interactive training and education within six months of assuming a supervisory position.
- b. All other employees shall receive one hour of classroom or other effective interactive training and education within six months of their employment or sooner for seasonal or temporary employees as described in Government Code § 12950.1.
- c. All employees shall receive refresher training every two years thereafter.

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If the required training is to be provided by DFEH online training courses, Human Resources should ensure that employees are provided the link or website address to the training course (Government Code § 12950).

313.7.2 TRAINING RECORDS

Human Resources shall be responsible for maintaining records of all discriminatory harassment training provided to members. Records shall be retained in accordance with established records retention schedules and for a minimum of two years (2 CCR 11023).

Child Abuse

314.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the investigation of suspected child abuse. This policy also addresses when Orange County District Attorney members are required to notify the county Child Protective Services (CPS) of suspected child abuse.

314.1.1 DEFINITIONS

Definitions related to this policy include:

Child - Unless otherwise specified by a cited statute, a child is any person under the age of 18 years.

Child abuse - Any offense or attempted offense involving violence or neglect with a child victim when committed by a person responsible for the child's care or any other act that would mandate notification to a social service agency or law enforcement (Penal Code § 11165.9; Penal Code § 11166).

314.2 CHILD ABUSE REPORTING

Pursuant to Penal Code § 11165.9, this Bureau is defined as a "child protective agency". All employees of this Bureau are responsible for the proper reporting of child abuse. Any employee who encounters any child whom he or she reasonably suspects has been the victim of child abuse, shall immediately take appropriate action and notify the appropriate law enforcement jurisdiction and Child Protective Services. Employees shall ensure that all Child Abuse Reports have been submitted to Child Protective Services as requested.

Employees can contact Orange County Child Protective Services at (714) 940-1000 or (800) 207-4464 or visit their website [here](#).

314.3 MANDATORY NOTIFICATION

Child Protective Services shall be notified when (Penal Code § 11166):

- a. There is a known or suspected instance of child abuse or neglect reported, which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or
- b. A person responsible for the child's welfare fails to adequately protect the child from abuse when the person knew or reasonably should have known that the child was in danger of abuse.

When the abuse or neglect occurs at a licensed facility or is alleged to have resulted from the actions of a person who is required to have a state license (e.g., foster homes, group homes, day care), notification shall also be made to the California Department of Social Services or other applicable licensing authority. When the alleged abuse or neglect involves a child of a minor parent or a dependent adult, notification

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shall also be made to the attorney of the minor or the dependent adult within 36 hours (Penal Code 11166.1; Penal Code 11166.2).

For purposes of notification, the abuse or neglect includes physical injury or death inflicted by other than accidental means upon a child by another person; sexual abuse (Penal Code § 11165.1); neglect (Penal Code § 11165.2); the willful harming or injuring of a child or the endangering of the person or health of a child (Penal Code § 11165.3); and unlawful corporal punishment or injury (Penal Code § 11165.4). Child abuse or neglect does not include a mutual affray between minors, nor does it include an injury caused by the reasonable and necessary force used by a peace officer acting within the course and scope of the peace officer's employment as a peace officer.

314.3.1 CONTACTING SUSPECTED CHILD ABUSE VICTIMS

In a situation where an investigator determines, upon speaking with a minor, that he/she is a victim of child abuse, they shall immediately notify the law enforcement agency with jurisdiction to respond and conduct a formal investigation.

The investigator shall make proper notification to their immediate supervisor as well as make proper notification to Child Protective Services. This information shall then be documented in a report (RMS).

314.3.2 RELEASE OF REPORTS

Reports of child abuse or suspected child abuse shall be confidential and may only be disclosed pursuant to Penal Code § 11167.5.

314.4 PROTECTIVE CUSTODY

Before taking any child into protective custody, the investigator should make reasonable attempts to contact CPS. Generally, removal of a child from the child's family, guardian, or other responsible adult should be left to the child welfare authorities when they are present or have become involved in an investigation.

Generally, members of this Bureau should remove a child from the child's parent or guardian without a court order only when no other effective alternative is reasonably available and immediate action reasonably appears necessary to protect the child. Prior to taking a child into protective custody, the investigator should take reasonable steps to deliver the child to another qualified parent or legal guardian, unless it reasonably appears that the release would endanger the child or result in abduction. If this is not a reasonable option, the investigator shall ensure that the child is delivered to CPS.

Whenever practicable, the investigator should inform a supervisor of the circumstances prior to taking a child into protective custody. If prior notification is not practicable, investigators should contact a supervisor promptly after taking a child into protective custody.

Children may only be removed from a parent or guardian in the following situations when a court order cannot reasonably be obtained in a timely manner (Welfare and Institutions Code § 305):

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- a. The investigator reasonably believes the child is a person described in Welfare and Institutions Code § 300, and further has good cause to believe that any of the following conditions exist:
 1. The child has an immediate need for medical care.
 2. The child is in immediate danger of physical or sexual abuse.
 3. The physical environment or the fact that the child is left unattended poses an immediate threat to the child's health or safety. In the case of a child left unattended, the investigator shall first attempt to locate and determine if a responsible parent or guardian is available and capable of assuming custody before taking the child into protective custody.
- b. The investigator reasonably believes the child requires protective custody under the provisions of Penal Code § 279.6, in one of the following circumstances:
 1. It reasonably appears to the investigator that a person is likely to conceal the child, flee the jurisdiction with the child or, by flight or concealment, evade the authority of the court.
 2. There is no lawful custodian available to take custody of the child.
 3. There are conflicting custody orders or conflicting claims to custody and the parties cannot agree which party should take custody of the child.
 4. The child is an abducted child.
- c. The child is in the company of, or under the control of, a person arrested for Penal Code § 278 (Detainment or concealment of child from legal custodian) or Penal Code § 278.5 (Deprivation of custody of a child or right to visitation). (Penal Code § 279.6).

A child taken into protective custody shall be delivered to CPS unless otherwise directed by court order. It is the investigator's responsibility to complete a Child Abuse Report (CAR) with CPS as well as complete a report (RMS).

In the event of recovering an abducted child where the investigator is delayed overnight, outside of Orange County, the investigator shall notify the local CPS agency. It will be the responsibility of that local CPS agency to properly place the child overnight until the investigator can proceed with the necessary travel arrangements to reunite the child with a parent/guardian.

Upon making arrangements with the local CPS agency, the investigator will notify his/her immediate supervisor by informing them of the circumstances involving the temporary placement of the child and their travel delays. The investigator will also document the incident in a report.

314.5 INTERVIEWS

314.5.1 INTERVIEWS AT SCHOOL

Any student at school who is a suspected victim of child abuse shall be afforded the option of being interviewed in private or selecting any qualified available adult member of the school staff to be present. The purpose of the staff member's presence is to provide comfort and support. The staff member shall not participate in the interview. The selection of a staff member should be such that it does not burden the school with costs or hardship (Penal Code § 11174.3).

Standards of Conduct

315.1 PURPOSE AND SCOPE

This policy establishes standards of conduct that are consistent with the values and mission of the Orange County District Attorney Bureau of Investigation and are expected of all Bureau members. The standards contained in this policy are not intended to be an exhaustive list of requirements and prohibitions but they do identify many of the important matters concerning conduct. In addition to the provisions of this policy, members are subject to all other provisions contained in this manual, as well as any additional guidance on conduct that may be disseminated by this Bureau or a member's supervisors.

315.2 POLICY

The continued employment or appointment of every member of the Orange County District Attorney Bureau of Investigation shall be based on conduct that reasonably conforms to the guidelines set forth herein. Failure to meet the guidelines set forth in this policy, whether on- or off-duty, may be cause for disciplinary action.

315.3 DIRECTIVES AND ORDERS

Members shall comply with lawful directives and orders from any Bureau supervisor or Bureau member in a position of authority, absent a reasonable and bona fide justification.

315.3.1 UNLAWFUL OR CONFLICTING ORDERS

Supervisors shall not knowingly issue orders or directives that, if carried out, would result in a violation of any law or Bureau policy. Supervisors should not issue orders that conflict with any previous order without making reasonable clarification that the new order is intended to countermand the earlier order.

No member is required to obey any order that appears to be in direct conflict with any federal law, state law or local ordinance. Following a known unlawful order is not a defense and does not relieve the member from criminal or civil prosecution or administrative discipline. If the legality of an order is in doubt, the affected member shall ask the issuing supervisor to clarify the order or shall confer with a higher authority. The responsibility for refusal to obey rests with the member, who shall subsequently be required to justify the refusal.

Unless it would jeopardize the safety of any individual, members who are presented with a lawful order that is in conflict with a previous lawful order, Bureau policy or other directive shall respectfully inform the issuing supervisor of the conflict. The issuing supervisor is responsible for either resolving the conflict or clarifying that the lawful order is intended to countermand the previous lawful order or directive, in which case the member is obliged to comply. Members who are compelled to follow a conflicting lawful order after having given the issuing supervisor the opportunity to correct the conflict, will not be held accountable for disobedience of the lawful order or directive that was initially issued.

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The person countermanding the original order shall notify, in writing, the person issuing the original order, indicating the action taken and the reason.

315.3.2 SUPERVISOR RESPONSIBILITIES

Supervisors and managers are required to follow all policies and procedures and may be subject to discipline for:

- a. Failure to be reasonably aware of the performance of their subordinates or to provide appropriate guidance and control.
- b. Failure to promptly and fully report any known misconduct of a member to his/her immediate supervisor or to document such misconduct appropriately or as required by policy.
- c. Directing a subordinate to violate a policy or directive, acquiesce to such a violation, or are indifferent to any such violation by a subordinate.
- d. The unequal or disparate exercise of authority on the part of a supervisor toward any member for malicious or other improper purpose.

315.4 GENERAL STANDARDS

Members shall conduct themselves, whether on- or off-duty, in accordance with the United States and California Constitutions and all applicable laws, ordinances and rules enacted or established pursuant to legal authority.

Members shall familiarize themselves with policies and procedures and are responsible for compliance with each. Members should seek clarification and guidance from supervisors in the event of any perceived ambiguity or uncertainty.

315.5 CAUSES FOR DISCIPLINE

The following are illustrative of causes for disciplinary action. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for violation of other rules, standards, ethics and specific action or inaction that is detrimental to efficient Bureau service:

315.5.1 LAWS, RULES AND ORDERS

- a. Violation of, or ordering or instructing a subordinate to violate any policy, procedure, rule, order, directive, requirement or failure to follow instructions contained in Bureau or County manuals.
- b. Disobedience of any legal directive or order issued by any Bureau member of a higher rank.
- c. Violation of federal, state, local or administrative laws, rules or regulations.

315.5.2 ETHICS

- a. Using or disclosing one's status as a member of the Orange County District Attorney Bureau of Investigation in any way that could reasonably be perceived as an attempt to gain influence or authority for non-Bureau business or activity.

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- b. The wrongful or unlawful exercise of authority on the part of any member for malicious purpose, personal gain, willful deceit or any other improper purpose.
- c. The receipt or acceptance of a reward, fee or gift from any person for service incident to the performance of the member's duties (lawful subpoena fees and authorized work permits excepted).
- d. Acceptance of fees, gifts or money contrary to the rules of this Bureau and/or laws of the state.
- e. Offer or acceptance of a bribe or gratuity.
- f. Misappropriation or misuse of public funds, property, personnel or services.
- g. Any other failure to abide by the standards of ethical conduct.

315.5.3 DISCRIMINATION, OPPRESSION OR FAVORITISM

Discriminating against, oppressing or providing favoritism to any person because of actual or perceived age, race, color, creed, religion, sex, sexual orientation, gender identity or expression, national origin, ancestry, marital status, physical or mental disability, medical condition or other classification protected by law, or intentionally denying or impeding another in the exercise or enjoyment of any right, privilege, power or immunity, knowing the conduct is unlawful.

315.5.4 RELATIONSHIPS

- a. Unwelcome solicitation of a personal or sexual relationship while on-duty or through the use of one's official capacity.
- b. Engaging in on-duty sexual activity including, but not limited to, sexual intercourse, excessive displays of public affection or other sexual contact.
- c. Establishing or maintaining an inappropriate personal or financial relationship, as a result of an investigation, with a known victim, witness, suspect or defendant while a case is being investigated or prosecuted, or as a direct result of any official contact.
- d. Associating with or joining a criminal gang, organized crime and/or criminal syndicate when the member knows or reasonably should know of the criminal nature of the organization. This includes any organization involved in a definable criminal activity or enterprise, except as specifically directed and authorized by this bureau.
- e. Associating on a personal, rather than official basis with persons who demonstrate recurring involvement in serious violations of state or federal laws after the member knows, or reasonably should know of such criminal activities, except as specifically directed and authorized by this Bureau.
- f. Participation in a law enforcement gang as defined by Penal Code § 13670. Participation is grounds for termination (Penal Code § 13670).

315.5.5 ATTENDANCE

- a. Leaving the job to which the member is assigned during duty hours without reasonable excuse and proper permission and approval.
- b. Unexcused or unauthorized absence or tardiness.
- c. Excessive absenteeism without cause and abuse of leave privileges.

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- d. Failure to report to work or to place of assignment at time specified and fully prepared to perform duties without reasonable excuse.

315.5.6 UNAUTHORIZED ACCESS, DISCLOSURE, OR USE

1. Unauthorized and inappropriate intentional release of confidential or protected information, materials, data, forms, or reports obtained as a result of the member's position with this bureau.
 - a. Members of this bureau shall not disclose the name, address, or image of any victim of human trafficking except as authorized by law (Penal Code § 293).
2. Disclosing to any unauthorized person any active investigation information.
3. The use of any information, photograph, video, or other recording obtained or accessed as a result of employment or appointment to this bureau for personal or financial gain or without the express authorization of the Bureau Chief or the authorized designee.
4. Loaning, selling, allowing unauthorized use, giving away, or appropriating any bureau property for personal use, personal gain, or any other improper or unauthorized use or purpose.
5. Using bureau resources in association with any portion of an independent civil action. These resources include but are not limited to personnel, vehicles, equipment, and nonsubpoenaed records.

315.5.7 EFFICIENCY

- a. Neglect of duty.
- b. Unsatisfactory work performance including, but not limited to, failure, incompetence, inefficiency or delay in performing and/or carrying out proper orders, work assignments or the instructions of supervisors without a reasonable and bona fide excuse.
- c. Concealing, attempting to conceal, removing or destroying defective or incompetent work.
- d. Unauthorized sleeping during on-duty time or assignments.
- e. Failure to notify the Bureau within three (3) days of any change in residence address or contact telephone numbers.

315.5.8 PERFORMANCE

1. Failure to disclose or misrepresenting material facts, or making any false or misleading statement on any application, examination form, or other official document, report or form, or during the course of any work-related investigation.
2. The falsification of any work-related records, making misleading entries or statements with the intent to deceive or the willful and unauthorized removal, alteration, destruction and/or mutilation of any Bureau record, public record, book, paper or document.
3. Failure to participate in, or giving false or misleading statements, or misrepresenting or omitting material information to a supervisor or other person in a position of authority, in connection with any investigation or in the reporting of any Bureau-related business.
4. Being untruthful or knowingly making false, misleading or malicious statements that are reasonably calculated to harm the reputation, authority or official standing of this Bureau or its members.

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5. Disparaging remarks or conduct concerning duly constituted authority to the extent that such conduct disrupts the efficiency of this Bureau or subverts the good order, efficiency and discipline of this Bureau or that would tend to discredit any of its members.
6. Unlawful gambling or unlawful betting at any time or any place. Legal gambling or betting under any of the following conditions:
 1. While on Bureau premises.
 2. At any work site, while on duty or while in uniform, or while using any Bureau equipment or system.
 3. Gambling activity undertaken as part of an investigator official duties and with the express knowledge and permission of a direct supervisor is exempt from this prohibition.
7. Engaging in political activities during assigned working hours except as expressly authorized by County policy, the memorandum of understanding, or the Bureau Chief. This does not apply to a member's unpaid lunch hour; however, the member may not act in a representative capacity for the Bureau.

315.5.9 CONDUCT

- a. Failure of any member to promptly and fully report activities on his/her part or the part of any other member where such activities resulted in contact with any other law enforcement agency or that may result in criminal prosecution or discipline under this policy.
- b. Unreasonable and unwarranted force to a person encountered or a person under arrest.
- c. Exceeding lawful peace officer powers by unreasonable, unlawful or excessive conduct.
- d. Unauthorized or unlawful fighting, threatening or attempting to inflict unlawful bodily harm on another.
- e. Engaging in horseplay that reasonably could result in injury or property damage.
- f. Discourteous, disrespectful or discriminatory treatment of any member of the public or any member of this Bureau or the County.
- g. Use of obscene, indecent, profane or derogatory language while on-duty or in uniform.
- h. Criminal, dishonest, or disgraceful conduct, whether on or off-duty, that adversely affects the member's relationship with this Bureau.
- i. Unauthorized possession of, loss of, or damage to Bureau property or the property of others, or endangering it through carelessness or maliciousness.
- j. Theft of Bureau property; misappropriation or misuse of public funds, property, personnel or the services or property of others; unauthorized removal or possession of Bureau property or the property of another person.
- k. Activity that is incompatible with a member's conditions of employment or appointment as established by law or that violates a provision of any memorandum of understanding or contract to include fraud in securing the appointment or hire.
- l. Any other on or off-duty conduct which any member knows or reasonably should know is unbecoming of a member of this Bureau, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon this Bureau or its members.

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315.5.10 SAFETY

- a. Failure to observe or violating Bureau safety standards or safe working practices.
- b. Failure to maintain current licenses or certifications required for the assignment or position (e.g., driver license, first aid).
- c. Unfit to adequately and safely perform law enforcement duties.
- d. Unsafe firearm or other dangerous weapon handling to include loading or unloading firearms in an unsafe manner, either on or off-duty.
- e. Carrying, while on the premises of the work place, any firearm or other lethal weapon that is not authorized by the member's appointing authority.
- f. Unsafe or improper driving habits or actions in the course of employment or appointment.
- g. Concealing or knowingly failing to report any on-the-job or work-related accident or injury as soon as practicable but within 24 hours.

315.5.11 INTOXICANTS

- a. Reporting for work or being at work following the use of intoxicants where such use may impair the employee's ability to perform assigned duties or where there is an immediate suspicion of ineffectiveness during public contact resulting from the use of intoxicants.
- b. Unauthorized possession or use of, or attempting to bring intoxicants to the work site, except as authorized in the performance of an official assignment. An employee who is authorized to consume intoxicants is not permitted to do so to such a degree that it may impair on-duty performance.
- c. Unauthorized possession, use of, or attempting to bring controlled substance or other illegal drug to any work site.

Information Technology Use

316.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the proper use of Orange County District Attorney Office information technology resources, including computers, hardware, software and systems.

316.1.1 DEFINITIONS

Definitions related to this policy include:

Computer system - All computers (on-site and portable), electronic devices, hardware, software, and resources owned, leased, rented or licensed by the Orange County District Attorney that are provided for official use by its members. This includes all access to, and use of, Internet Service Providers (ISP) or other service providers provided by or through the Bureau or Bureau funding.

Hardware - Includes, but is not limited to, computers, computer terminals, network equipment, electronic devices, telephones (land lines only), modems or any other tangible computer device generally understood to comprise hardware.

Software - Includes, but is not limited to, all computer programs, systems and applications, including shareware. This does not include files created by the individual user.

Temporary file, permanent file or file - Any electronic document, information or data residing or located, in whole or in part, on the system including, but not limited to, spreadsheets, calendar entries, appointments, tasks, notes, letters, reports, messages, photographs or videos.

316.2 POLICY

It is the policy of the Orange County District Attorney Bureau of Investigation that members shall use information technology resources, including computers, software and systems that are issued or maintained by this Bureau in a professional manner and in accordance with this policy.

316.3 PRIVACY EXPECTATION

Members forfeit any expectation of privacy with regard to emails, texts or anything published, shared, transmitted or maintained through file-sharing software or any Internet site that is accessed, transmitted, received or reviewed on any Bureau computer system.

The Orange County District Attorney Bureau of Investigation reserves the right to access, audit and disclose, for whatever reason, any message, including attachments, and any information accessed, transmitted, received or reviewed over any technology that is issued or maintained by the Bureau, including the Bureau email system, computer network and/or any information placed into storage on any Bureau system or device. This includes records of all keystrokes or Web-browsing history made at any Bureau computer or over any Bureau network. The fact that access to a database, service or website

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requires a username or password will not create an expectation of privacy if it is accessed through Bureau computers or networks.

In compliance with § 980 of the Labor Code, the following shall apply:

Social media means an electronic service or account, or electronic content, including, but not limited to, videos, still photographs, blogs, video blogs, podcasts, instant and text messages, email, online services or accounts, or Internet Web site profiles or locations.

An employer shall not require or request an employee or applicant for employment to do any of the following:

- a. Disclose a username or password for the purpose of accessing personal social media.
- b. Access personal social media in the presence of the employer.
- c. Divulge any personal social media, except as provided below:
 1. Nothing in this section shall affect an employer's existing rights and obligations to request an employee to divulge personal social media reasonably believed to be relevant to an investigation of allegations of employee misconduct or employee violation of applicable laws and regulations, provided that the social media is used solely for purposes of that investigation or a related proceeding.
- d. Nothing in this section precludes an employer from requiring or requesting an employee to disclose a username, password, or other method for the purpose of accessing an employer-issued electronic device.
- e. An employer shall not discharge, discipline, threaten to discharge or discipline, or otherwise retaliate against an employee or applicant for not complying with a request or demand by the employer that violates this section. However, this section does not prohibit an employer from terminating or otherwise taking an adverse action against an employee or applicant if otherwise permitted by law.

316.4 RESTRICTED USE

Members shall not access computers, devices, software or systems for which they have not received prior authorization or the required training. Members shall immediately report unauthorized access or use of computers, devices, software or systems by another member to their supervisors or commanders.

Members shall not use another person's access passwords, logon information and other individual security data, protocols and procedures unless directed to do so by a supervisor.

316.4.1 SOFTWARE

Members shall not copy or duplicate any copyrighted or licensed software except for a single copy for backup purposes in accordance with the software company's copyright and license agreement.

To reduce the risk of a computer virus or malicious software, members shall not install any unlicensed or unauthorized software on any Bureau computer without the approval of the information systems

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technology (IT) staff and the authorization of the Bureau Chief or authorized designee. Members shall not install personal copies of any software onto any Bureau computer without the approval of the IT staff or authorization from the Bureau Chief or authorized designee.

When related to criminal investigations, software program files may be downloaded only with the approval of the IT staff and with the authorization of the Bureau Chief or the authorized designee.

No member shall knowingly make, acquire or use unauthorized copies of computer software that is not licensed to the County while on County premises, computer systems or electronic devices. Such unauthorized use of software exposes the County and Bureau members to severe civil and criminal penalties.

Introduction of software by members should only occur as part of the automated maintenance or update process of Bureau- or County-approved or installed programs by the original manufacturer, producer or developer of the software.

Any other introduction of software requires prior authorization from IT staff and a full scan for malicious attachments.

316.4.2 HARDWARE

Access to technology resources provided by or through the Bureau of Investigation shall be strictly limited to Bureau-related activities. Data stored on or available through Bureau computer systems shall only be accessed by authorized members who are engaged in an active investigation or assisting in an active investigation, or who otherwise have a legitimate law enforcement or Bureau-related purpose to access such data. Any exceptions to this policy must be approved by a supervisor.

316.4.3 INTERNET USE

Internet access provided by or through the County shall be strictly limited to Bureau-related activities. Internet sites containing information that is not appropriate or applicable to Bureau use and which shall not be intentionally accessed include, but are not limited to, adult forums, pornography, gambling, chat rooms and similar or related Internet sites. Certain exceptions may be permitted with the express approval of a supervisor as a function of a member's assignment.

Downloaded information shall be limited to messages, mail and data files.

316.4.4 OFF-DUTY USE

Members shall only use technology resources provided by the County while on-duty or in conjunction with specific on-call assignments unless specifically authorized by a supervisor. This includes the use of e-mail or any other "off the clock" work-related activities.

Refer to the Orange County District Attorney [Cellular, Wireless, and Mobile Communication Devices policy](#) for guidelines regarding off-duty use of personal communication devices (PCD) such as cell phones and tablets.

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316.5 PROTECTION OF AGENCY SYSTEMS AND FILES

All members have a duty to protect the computer system and related systems and devices from physical and environmental damage and are responsible for the correct use, operation, care and maintenance of the computer system.

Members shall ensure Bureau computers and access terminals are not viewable by persons who are not authorized users. Computers and terminals should be secured, users logged off and password protections enabled whenever the user is not present. Access passwords, logon information and other individual security data, protocols and procedures are confidential information and are not to be shared. Password length, format, structure and content shall meet the prescribed standards required by the computer system or as directed by a supervisor and shall be changed at intervals as directed by IT staff or a supervisor.

It is prohibited for a member to allow an unauthorized user to access the computer system at any time or for any reason. Members shall promptly report any unauthorized access to the computer system or suspected intrusion from outside sources (including the Internet) to a supervisor.

316.6 INSPECTION OR REVIEW

A supervisor or the authorized designee has the express authority to inspect or review the computer system, all temporary or permanent files, related electronic systems or devices, and any contents thereof, whether such inspection or review is in the ordinary course of his/her supervisory duties or based on cause.

Reasons for inspection or review may include, but are not limited to, computer system malfunctions, problems or general computer system failure, a lawsuit against the Bureau involving one of its members or a member's duties, an alleged or suspected violation of any Bureau policy, a request for disclosure of data, or a need to perform or provide a service.

The IT staff may extract, download or otherwise obtain any and all temporary or permanent files residing or located in or on the Bureau computer system when requested by a supervisor, based on the previously mentioned reasons.

316.7 BUREAU POLICY AND ACKNOWLEDGEMENT

The Orange County District Attorney's Office Computer Use Policy is displayed to the employee as they log on to their computer and requires the employee's acknowledgement in order to complete the login. This policy supersedes all other computer use policies. The intent of this policy is to limit the use of the District Attorney's computer system to County related business. Access to Email, Internet and Intranet are provided to District Attorney employees to conduct County related business only.

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- a. The computer equipment, software, and its associated servers, peripherals and network (collectively referred to as the System) belong to the County of Orange. The use of this System is limited to County related business. E-mail, Internet, and Intranet access and use via this System are also provided to employees for County related business purposes only.
- b. The County retains the right to access and inspect information stored on this System. The county retains the right to audit, inspect, and/or monitor each user's System access and use of e-mail, the Internet and the Intranet.
- c. By using any part of this System, the user agrees to limit its use to County related business. The user has no expectation of privacy in all content and non-content emails, Internet and Intranet accessed information and sites, and in all information stored on this System. The County stores Internet, Intranet and Outlook usage for months and years. The County monitors such usage as it deems appropriate.
- d. User passwords are not to be shared.
- e. Unauthorized use of this System may result in disciplinary action.

Media Relations

317.1 PURPOSE AND SCOPE

This policy provides guidelines for media releases and media access to scenes of disasters, criminal investigations, emergencies and other law enforcement activities.

317.2 RESPONSIBILITIES

The ultimate authority and responsibility for the release of information to the media shall remain with the District Attorney. However, in situations not warranting immediate notice to the District Attorney and in situations where the District Attorney has given prior approval, Bureau commanders, and designated Press Information Officer(s) (PIO) may prepare and release information to the media in accordance with this policy and the applicable law.

317.2.1 MEDIA REQUEST

Any media request for information or access to a law enforcement situation shall be referred to the designated Bureau media representative, or if unavailable, to the first available supervisor. Prior to releasing any information to the media, employees shall consider the following:

- a. At no time shall any employee of this Bureau make any comment or release any official information to the media without prior approval from a supervisor or the designated media representative;
- b. In situations involving multiple law enforcement agencies, every reasonable effort should be made to coordinate media releases with the authorized representative of each involved agency prior to the release of any information by this Bureau;
- c. Under no circumstance should any member of this Bureau make any comment(s) to the media regarding any law enforcement incident not involving this Bureau without prior approval of the Bureau Chief.
 1. When off-duty, a member is entitled to express personal opinions or comments to the media concerning law enforcement incidents not involving the Bureau.
 2. If such expression occurs when a member is off-duty and not concerning incidents involving the Bureau, a member must not associate themselves as an employee of the Orange County District Attorney's Office. For further, refer to Employee Speech, Expression and Social Networking policy.

317.3 ACCESS

Authorized media representatives shall be provided access to scenes of disasters, criminal investigations, emergencies, and other law enforcement activities as required by law.

Access by the media is subject to the following conditions (Penal Code § 409.5(d)):

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- a. The media representative shall produce valid press credentials that shall be prominently displayed at all times while in areas otherwise closed to the public. Media representatives may not bring or facilitate the transport of an unauthorized person into a closed area unless it is for the safety of the person.
- b. Media representatives may be prevented from interfering with emergency operations and criminal investigations.
 1. Based upon available resources, reasonable effort should be made to provide a safe staging area for the media that is near the incident and that will not interfere with emergency or criminal investigation operations. All information released to the media should be coordinated through the PIO or other designated spokesperson.
- c. No member of this Bureau who is under investigation shall be subjected to media visits or interviews without the consent of the involved member (Government Code § 3303(e)).
- d. Media interviews with individuals who are in custody should not be permitted without the approval of the District Attorney and the express consent of the person in custody.

317.3.1 CRITICAL OPERATIONS

A critical incident or tactical operation should be handled in the same manner as a crime scene, except the media should not be permitted within the inner perimeter of the incident, subject to any restrictions as determined by the supervisor in charge. Bureau members shall not jeopardize a critical incident or tactical operation in order to accommodate the media. All comments to the media shall be coordinated through a supervisor or the PIO.

317.3.2 TEMPORARY FLIGHT RESTRICTIONS

Whenever the presence of media or other aircraft pose a threat to public or member safety or significantly hamper incident operations, the field supervisor should consider requesting a Temporary Flight Restriction (TFR). All requests for a TFR should be routed through the Commander. The TFR request should include specific information regarding the perimeter and altitude necessary for the incident and should be requested through the appropriate control tower. If the control tower is not known, the Federal Aviation Administration (FAA) should be contacted (14 CFR 91.137).

317.4 POLICY

The Orange County District Attorney is committed to safeguarding individuals' privacy rights while providing non-confidential information to the media on matters of public interest. This is done in accordance with the Records Maintenance and Release Policy and public records laws. Information that could potentially adversely affect ongoing investigations will not be disclosed.

317.5 PROVIDING ADVANCE INFORMATION

To protect the safety and rights of investigators and other persons, advance information about planned actions by law enforcement personnel, such as movement of persons in custody or the execution of an

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arrest or search warrant, should not be disclosed to the media, nor should media representatives be invited to be present at such actions except with the prior approval of the Bureau Chief.

Any exceptions to the above should only be considered for the furtherance of legitimate law enforcement purposes. Prior to approving any exception, the Bureau Chief will consider, at a minimum, whether the release of information or presence of the media would unreasonably endanger any individual, prejudice the rights of any person, or is otherwise prohibited by law.

317.6 CONFIDENTIAL OR RESTRICTED INFORMATION

It shall be the responsibility of the PIO to ensure that confidential or restricted information is not inappropriately released to the media (see the Records Maintenance and Release and Personnel Records policies). When in doubt, authorized and available legal counsel should be consulted prior to releasing any information.

317.6.1 EMPLOYEE INFORMATION

The identities of investigators involved in shootings or other critical incidents may only be released to the media upon the consent of the involved investigator or upon a formal request filed.

Any requests for copies of related reports or additional information not contained in the information log, including the identity of investigators involved in shootings or other critical incidents, shall be referred to the PIO.

Requests should be reviewed and fulfilled by the Custodian of Records, or if unavailable, the Commander or the authorized designee. Such requests will be processed in accordance with the provisions of the Records Maintenance and Release Policy and public records laws.

Subpoenas and Court Appearances

318.1 PURPOSE AND SCOPE

This policy establishes the guidelines for Bureau members who must appear in court. It will allow the Orange County District Attorney Bureau of Investigation to cover any related work absences and keep the Bureau informed about relevant legal matters. This policy does not apply to members subject to civil / criminal proceedings.

318.2 POLICY

Orange County District Attorney Bureau of Investigation members will respond appropriately to all subpoenas and any other court-ordered appearances.

318.3 DEFINITIONS

On-Call - When an investigator has appeared in court, or is at the time on duty, and has been told by a member of the court that he/she is free to leave the court or return to duty, subject to being available by phone if called back.

Standby - When an investigator receives a subpoena of a type which allows him or her to not appear in court, but remain available by phone so that he or she may be directed to appear in court within a reasonable amount of time.

Trailing Status - When an investigator remains on standby status for additional court sessions until notified otherwise.

Mandatory Appearance - Subpoenas marked as "Mandatory Appearance" requires an employee's physical appearance in the specified court. Failure to timely appear in the specified court, either intentionally or by negligence, may result in disciplinary action.

318.4 COURT SUBPOENAS

Employees who receive subpoenas related to their employment with this Bureau are subject to the provisions of this policy. Employees should be aware that their compliance is mandatory on all cases for which they have been properly subpoenaed, or properly notified. This policy applies to civil and criminal subpoenas. Employees are expected to cooperate with the prosecution to ensure the successful conclusion of a case.

318.5 ACCEPTANCE OF SUBPOENAS

Only Bureau members authorized to receive a subpoena on behalf of this Bureau or any of its members may do so. This may be accomplished by personal service to the investigator or by delivery of two copies of the subpoena to the investigator's supervisor or other authorized Bureau agent (Government Code § 68097.1; Penal Code § 1328(c)).

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The party that issues a civil subpoena to an investigator to testify as a witness must tender the statutory fee of \$275 with the subpoena for each day that an appearance is required before service is accepted of the subpoena (Government Code § 68097.2).

An immediate supervisor or authorized individual may refuse to accept service for a criminal subpoena if (Penal Code § 1328(d)(e)):

- a. He/she knows that he/she will be unable to deliver a copy of the subpoena to the named investigator within sufficient time for the named investigator to comply with the subpoena.
- b. It is less than five working days prior to the date listed for an appearance and he/she is not reasonably certain that service can be completed.

If, after initially accepting service of a criminal subpoena, a supervisor or other authorized individual determines that he/she is unable to deliver a copy of the subpoena to the named investigator within sufficient time for the named investigator to comply with the subpoena, the supervisor or the subpoena clerk shall notify the server or the attorney named on the subpoena of such not less than 48 hours prior to the date listed for the appearance (Penal Code § 1328(f)).

318.5.1 SPECIAL NOTIFICATION REQUIREMENTS

Any member who is subpoenaed to testify, agrees to testify or provides information on behalf of, or at the request of any party other than the County Counsel or the prosecutor, shall notify his/her immediate supervisor without delay regarding:

- a. Any civil case where the County or one of its members, as a result of his/her official capacity, is a party.
- b. Any civil case where any other city, county, state or federal unit of government or a member of any such unit of government, as a result of his/her official capacity, is a party.
- c. Any criminal proceeding where the member is called to testify or provide information on behalf of the defense.
- d. Any civil action stemming from the member's on-duty activity or because of his/her association with the Orange County District Attorney.
- e. Any personnel or disciplinary matter when called to testify or to provide information by a government entity other than the Orange County District Attorney.

The supervisor will then notify the Bureau Chief via the chain of command and the appropriate prosecuting attorney as may be indicated by the case. The Bureau Chief should determine if additional legal support is necessary.

No member shall be retaliated against for testifying in any matter, or otherwise disciplined.

318.5.2 CIVIL SUBPOENA

The Bureau will compensate members who appear in their official capacities on civil matters arising out of their official duties, as directed by the current Memorandum of Understanding or collective bargaining

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agreement. In such situations, the Bureau will also reimburse any member for reasonable and necessary travel expenses.

The Bureau should seek reimbursement for the member's compensation through the civil attorney of record who subpoenaed the member.

318.5.3 OFF-DUTY RELATED SUBPOENAS

Members receiving valid subpoenas for off-duty actions not related to their employment or appointment will not be compensated for their appearance. Arrangements for time off shall be coordinated through their immediate supervisors.

318.6 REFUSAL OF SUBPOENA

Valid reasons for an individually named employee not accepting subpoenas include:

- a. Illness
- b. Previously approved training
- c. Vacations which are scheduled and approved before receipt of the subpoena

Regular days off are not valid reasons for refusing the subpoena or missing court. If the subpoena has been received by the individually named employee, and a valid reason exists for refusing the subpoena, the subpoena shall be promptly returned with a specified reason for refusal as well as the dates when the employee will become available. It shall then become the responsibility of the employee to notify the assigned deputy district attorney or other attorney of record of the bona fide unavailability of the employee.

Other reasons for refusal are as follows:

- a. The immediate supervisor or authorized individual knows that he/she will be unable to deliver a copy of the subpoena to the named employee within sufficient time for the named employee to comply with the subpoena.
- b. If the subpoena is presented for service to an immediate supervisor or other authorized individual less than five (5) working days prior to the date listed for appearance.
- c. If, after initially accepting service of the subpoena, a supervisor or other authorized individual determines that he/she will be unable to deliver a copy of the subpoena to the individually named employee within sufficient time for the named employee to comply with the subpoena, the supervisor shall notify the server or the attorney named on the subpoena of such not less than 48 hours prior to the date listed for appearance (Penal Code § 1328(f)).

318.7 FAILURE TO APPEAR

Any member who fails to comply with the terms of any properly served subpoena or court-ordered appearance may be subject to discipline. This includes properly served orders to appear that were issued by a state administrative agency.

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318.8 STANDBY

To facilitate standby agreements, members are required to provide and maintain current information on their addresses and contact telephone numbers with the Bureau.

If a member on standby changes his/her location during the day, the member shall notify the designated Bureau member of how he/she can be reached. Members are required to remain on standby until released by the court or the party that issued the subpoena.

318.9 OVERTIME APPEARANCES

If an employee appeared on his/her day off, or outside of their scheduled work hours, he/she will be compensated in accordance with the current employee's Memorandum of Understanding.

318.10 COURTROOM PROTOCOL

When appearing in court, members shall:

- a. Be punctual and prepared to proceed immediately with the case for which they are scheduled to appear.
- b. Dress in the Bureau uniform or business attire.
- c. Observe all rules of the court in which they are appearing and remain alert to changes in the assigned courtroom where their matter is to be heard.

318.10.1 PREPARATION FOR TESTIMONY

Before the date of testifying, the subpoenaed member shall request a copy of relevant reports and become familiar with the content in order to be prepared for court.

Outside Agency Assistance

319.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance to members when requesting or responding to a request for mutual aid or when assisting another law enforcement agency. This policy does not apply to those assigned to various joint task forces or multi-jurisdictional, long-term operations.

319.2 POLICY

It is the policy of the Orange County District Attorney Bureau of Investigation to promptly respond to requests for assistance by other law enforcement agencies, subject to available resources and consistent with the applicable laws and policies of this Bureau.

319.3 ASSISTING OUTSIDE AGENCIES

Generally, requests for any type of assistance from another agency should be routed to the Division commander's office for approval. In some instances, a Memorandum of Understanding or other established protocol may exist that eliminates the need for approval of individual requests.

When another law enforcement agency requests assistance from this Bureau, the commander may authorize, if available, an appropriate number of personnel to assist. Members are reminded that their actions when rendering assistance must conform with applicable laws and be consistent with the policies of this Bureau.

Investigators may respond to a request for emergency assistance, however, they shall notify a supervisor of their activity as soon as practicable.

Arrestees may be temporarily detained by this Bureau until arrangements for transportation are made by the outside agency. Probation violators who are temporarily detained by this Bureau will not ordinarily be booked by the investigator. Only in exceptional circumstances, and subject to supervisor approval, will the investigator provide transportation of arrestees to other facilities on behalf of another agency.

When transportation assistance is rendered, a report shall be prepared and submitted by the handling investigator unless otherwise directed by a supervisor.

319.3.1 INITIATED ACTIVITY

Any on-duty investigator who engages in law enforcement activities of any type that are not part of a mutual aid request, and take place outside the jurisdiction of Orange County, shall notify his/her supervisor or the Professional Standards Division commander and dispatch as soon as practicable. This requirement does not apply to special enforcement details or multi-agency units that regularly work in multiple jurisdictions.

319.4 REQUESTING OUTSIDE ASSISTANCE

Outside Agency Assistance

If assistance is needed from another agency, the member requesting assistance should, if practicable, first notify a supervisor. The handling member or supervisor should direct assisting personnel to where they are needed and to whom they should report when they arrive.

The requesting member should arrange for appropriate radio communication capabilities, if necessary and available, so that communication can be coordinated between assisting personnel.

Handcuff and Restraints Policy

320.1 PURPOSE AND SCOPE

This policy provides guidelines for handling situations involving handcuffing during detentions and arrests. This policy is also applicable to Flexcuffs which will be considered synonymous with handcuffs for purposes of this policy.

320.2 POLICY

The Orange County District Attorney's Office Bureau of Investigation authorizes the use of restraint devices in accordance with this policy, the Use of Force Policy § 300 and Bureau training. Restraint devices shall not be used to punish, to display authority, or as a show of force. Restraints shall be used when necessary for the safety of the arrestee, investigators or others and as otherwise set forth in this policy.

320.3 USE OF RESTRAINTS

Only members who have successfully completed Bureau-approved training on the use of restraint devices described in this policy are authorized to use these devices.

When deciding whether to use handcuffs or plastic cuffs, investigators should carefully balance investigator safety concerns with factors that include, but are not limited to:

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

320.3.1 RESTRAINT OF DETAINEES

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

320.3.2 RESTRAINT OF PREGNANT PERSONS

Persons who are known to be pregnant should be restrained in the least restrictive manner that is effective for officer safety and only in extraordinary circumstances shall these persons be restrained by the use of leg irons, waist chains, or handcuffs behind the body. If any of the mentioned restraints are

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used on a person known to be pregnant, notification shall be made to the investigator's immediate supervisor as soon as practicable.

No person who is in labor, delivery, or recovery after delivery, shall be handcuffed or restrained except in extraordinary circumstances and only when a supervisor makes an individualized determination that such restraints are necessary for the safety of the arrestee, investigators, or others (Penal Code Section § 3407; Penal Code Section § 6030).

320.3.3 RESTRAINT OF JUVENILES

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

320.3.4 NOTIFICATIONS

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

320.3.5 RESTRAINT DURING FLIGHT EXTRADITION

An investigator, while transporting a prisoner on a flight, must ensure the prisoner is restrained from full use of his/her hands by using an appropriate device. The prisoner's restraints shall also not be visible to the public. In such a situation, waist chains are applicable in order to safely and securely transport the prisoner. The use of leg shackles is not permitted per Transportation Security Administration (T.S.A.) guidelines.

320.4 APPLICATION OF HANDCUFFS OR PLASTIC CUFFS

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

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

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

Handcuffs should be removed as soon as the investigator reasonably believes it to be safe or after the person has been searched and is safely confined within a detention facility.

Handcuff and Restraints Policy

320.5 REQUIRED DOCUMENTATION

If an individual is restrained and released without an arrest, the investigator shall document the details of the detention and the need for handcuffs or plastic cuffs.

Major Incident Notification

321.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance to members of this Bureau in determining when, how and to whom notification of major incidents should be made.

321.2 POLICY

The Orange County District Attorney Bureau of Investigation recognizes that certain incidents should be brought to the attention of supervisors or other specified personnel of this Bureau to facilitate the coordination of activities and ensure that inquiries from the media and the public may be properly addressed.

321.3 MINIMUM CRITERIA FOR NOTIFICATION

Most situations where the media show a strong interest are also of interest to the Bureau Chief and the affected commanders. The following list of incident types is provided as a guide for notification and is not intended to be all inclusive:

- Investigator-involved shooting - on or off duty (see Investigator-Involved Shootings and Death Policy § 305)
- Local agency officer-involved shootings
- Significant injury or death to employee - on or off duty
- In-custody deaths
- Death of a prominent Orange County official
- Arrest of a Bureau employee or prominent Orange County official
- Any event that would attract media attention related to the Orange County District Attorney's Office

321.4 ASSISTANT CHIEF RESPONSIBILITY

The Assistant Chief is responsible for making the appropriate notifications. The Assistant Chief shall make reasonable attempts to obtain as much information on the incident as possible before notification. The Assistant Chief shall attempt to make the notifications as soon as practicable. Notification should be made by calling the home telephone number first and then by any other available contact numbers.

321.4.1 STAFF NOTIFICATION

In the event an incident occurs described in the Major Incident Notification Policy, the Bureau Chief shall be notified along with the affected Bureau commander and supervisor.

321.5 ASSOCIATION NOTIFICATION

Major Incident Notification

Upon notice of a major incident (hospitalization or serious injury) involving any union member, either on-duty during the scope of their employment or off-duty (off-duty incident where employee intervened as a peace officer), the Assistant Chief should make proper notification to the appropriate association (AOCDS /OCEA/ACLEMS) as soon as possible.

Anti-Reproductive Rights Crimes Reporting

322.1 PURPOSE AND SCOPE

This policy shall establish a procedure for the mandated reporting of Anti-Reproductive Rights Crimes (ARRC) to the Attorney General pursuant to the Reproductive Rights Law Enforcement Act (Penal Code § 13775 et. seq.).

322.2 DEFINITIONS

Penal Code § 423.2 provides that the following acts shall be considered Anti-Reproductive Rights Crimes (ARRC) when committed by any person, except a parent or guardian acting towards his or her minor child or ward:

- a. By force, threat of force, or physical obstruction that is a crime of violence, intentionally injures, intimidates, interferes with, or attempts to injure, intimidate, or interfere with, any person or entity because that person or entity is a reproductive health services client, provider, or assistant, or in order to intimidate any person or entity, or any class of persons or entities, from becoming or remaining a reproductive health services client, provider, or assistant;
- b. By non-violent physical obstruction, intentionally injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with, any person or entity because that person or entity is a reproductive health services client, provider, or assistant, or in order to intimidate any person or entity, or any class of persons or entities, from becoming or remaining a reproductive health services client, provider or assistant;
- c. Intentionally damages or destroys the property of a person, entity, or facility, or attempts to do so, because the person, entity, or facility is a reproductive health services client, provider, assistant, or facility.

322.3 REPORTING REQUIREMENTS TO THE ATTORNEY GENERAL

Any report of an ARRC shall be referred to the local applicable agency.

Limited English Proficiency Services

323.1 PURPOSE AND SCOPE

Language barriers can sometimes inhibit or even prohibit individuals with limited English proficiency (LEP) from gaining meaningful access to, or an understanding of important rights, obligations and services. It is therefore the policy of this Bureau to take all reasonable steps to ensure timely and equal access to all individuals, regardless of national origin or primary language (Title VI of the Civil Rights Act of 1964, § 601, 42 United States Code 2000d and the Omnibus Crime Control and Safe Street Act of 1968).

323.1.1 DEFINITIONS

Definitions related to this policy include:

Authorized interpreter - A person who has been screened and authorized by the Bureau to act as an interpreter and/or translator for others.

Interpret or interpretation - The act of listening to a communication in one language (source language) and orally converting it to another language (target language), while retaining the same meaning.

Limited English proficient (LEP) - Any individual whose primary language is not English and who has a limited ability to read, write, speak or understand English. These individuals may be competent in certain types of communication (e.g., speaking or understanding) but still be LEP for other purposes (e.g., reading or writing). Similarly, LEP designations are context-specific; an individual may possess sufficient English language skills to function in one setting but these skills may be insufficient in other situations.

Bilingual Member - A member of the Orange County District Attorney, designated by the Bureau, who has the ability to communicate fluently, directly and accurately in both English and another language. Bilingual members may be fluent enough to communicate in a non-English language but may not be sufficiently fluent to interpret or translate from one language into another.

Translate or translation - The replacement of written text from one language (source language) into an equivalent written text (target language).

323.2 FOUR-FACTOR ANALYSIS

Since there are many different languages that members could encounter, the Bureau will utilize the four-factor analysis outlined in the U.S. Department of Justice (DOJ) [Guidance to Federal Financial Assistance Recipients](#), available at the DOJ website, to determine which measures will provide meaningful access to its services and programs. It is recognized that law enforcement contacts and circumstances will vary considerably. This analysis, therefore, must remain flexible and will require an ongoing balance of four factors, which are:

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- a. The number or proportion of LEP individuals eligible to be served or likely to be encountered by Bureau members, or who may benefit from programs or services within the jurisdiction of the Bureau or a particular geographic area.
- b. The frequency with which LEP individuals are likely to come in contact with Bureau members, programs or services.
- c. The nature and importance of the contact, program, information or service provided.
- d. The cost of providing LEP assistance and the resources available.

As indicated above, the intent of this analysis is to provide a balance that reasonably ensures meaningful access by LEP individuals to critical services while not imposing undue burdens on the Bureau's personnel.

While this Bureau will not discriminate against or deny any individual access to services, rights or programs based upon national origin or any other protected interest or right, the above analysis will be utilized to determine the availability and level of assistance provided to any LEP individual or group.

323.3 TYPES OF LEP ASSISTANCE AVAILABLE

Depending on the balance of the above four factors, this Bureau will make every reasonable effort to provide meaningful and timely assistance to LEP individuals through a variety of services, where available. LEP individuals may elect to accept interpreter services offered by the Bureau at no cost or choose to provide their own interpreter services at their own expense. Bureau personnel should document in any related report whether LEP individual elected to use interpreter services provided by the Bureau or some other source. Bureau-provided interpreter services may include, but are not limited to, the assistance methods described in this section.

323.3.1 COMMUNITY VOLUNTEERS AND OTHER SOURCES INTERPRETATION

Where competent bilingual Bureau personnel or other County-certified staff are unavailable to assist, responsible members of the community who have demonstrated competence in either monolingual (direct) communication and/or in interpretation and translation (as noted in above) may be called upon to assist in communication efforts. Sources for these individuals may include neighboring police departments, university languages and linguistics departments, local businesses, banks, churches, neighborhood leaders and school officials. Bureau personnel should ensure that community members are able to provide unbiased assistance. The nature of the contact and relationship between the LEP individual offering services must be carefully considered (e.g., victim/suspect).

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Except for exigent or very informal and non-confrontational circumstances, the use of an LEP individual's bilingual friends or family members, particularly children, are generally not recommended and Bureau personnel shall make case-by case determinations on the appropriateness of using such individuals.

323.3.2 BILINGUAL PERSONNEL

Employees utilized for LEP services need not be certified as interpreters, but must have demonstrated, through established Bureau procedures, a level of competence to ascertain whether the employee's language skills are best suited to monolingual communications, interpretation, translation, or all or none of these functions. All employees used for communication with LEP individuals must demonstrate knowledge of the ethical issues involved when functioning as a language conduit. In addition, employees who serve as interpreters and/or translators must have demonstrated competence in both English and non-English language involved and knowledge of the functions of an interpreter; including but not limited to the ethics requirements of interpretation. When bilingual employees of this Bureau are not available, employees from other County departments who have the requisite training may be requested.

323.3.3 WRITTEN FORMS AND GUIDELINES

This Bureau will determine the most frequently used and critical forms and guidelines and translate these documents into the languages most likely to be requested. The Bureau will arrange to make these translated forms available to Bureau personnel and other appropriate individuals.

323.4 AUDIO RECORDINGS

The Bureau may develop audio recordings of important or frequently requested information in a language most likely to be understood by those LEP individuals who are representative of the community being served.

323.5 SOURCES OF AUTHORIZED INTERPRETERS

The Bureau may contract with authorized interpreters who are available over the telephone. Members may use these services with the approval of a supervisor and in compliance with established procedures.

Other sources may include:

- Qualified bilingual members of this Bureau or personnel from other County departments.
- Individuals employed exclusively to perform interpretation services.
- Contracted in-person interpreters, such as state or federal court interpreters, among others.
- Interpreters from other agencies who have been qualified as interpreters by this Bureau, and with whom the Bureau has a resource-sharing or other arrangement that they will interpret according to Bureau guidelines.

323.6 CONTACT AND REPORTING

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Whenever any member of this Bureau is required to complete a report or other documentation, and interpretation services are provided to any involved LEP individual, such services should be noted in the related report. Members should document the type of interpretation services utilized and whether the individual elected to use services provided by the Bureau or some other identified source.

323.7 FIELD ENFORCEMENT

Field enforcement will generally include such contacts as traffic stops, pedestrian stops, serving warrants and restraining orders, crowd/traffic control and other routine field contacts that may involve LEP individuals. The scope and nature of these activities and contacts will inevitably vary. Members and/or supervisors must assess each situation to determine the need and availability of language assistance to all involved LEP individuals and utilize the methods outlined in this policy to provide such assistance.

Although not every situation can be addressed in this policy, it is important that members are able to effectively communicate the reason for a contact, the need for information and the meaning or consequences of any enforcement action. For example, it would be meaningless to request consent to search if the investigator is unable to effectively communicate with an LEP individual.

If available, investigators should obtain the assistance of a qualified bilingual member or an authorized interpreter before placing an LEP individual under arrest.

323.8 INVESTIGATIVE INTERVIEWS

In any situation where an interview may reveal information that could be used as the basis for arrest or prosecution of an LEP individual, and a qualified bilingual member is unavailable or lacks the skills to directly communicate with the LEP individual, an authorized interpreter should be used. This includes interviews conducted during an investigation with victims, witnesses and suspects. In such situations, audio recordings of the interviews should be made when reasonably possible. Identification and contact information for the interpreter (e.g., name, address) should be documented so that the person can be subpoenaed for trial if necessary.

If an authorized interpreter is needed, investigators should consider calling for an authorized interpreter in the following order:

- An authorized Bureau member or allied agency interpreter
- An authorized telephone interpreter
- Any other authorized interpreter

Any *Miranda* warnings shall be provided to suspects in their primary language by an authorized interpreter or, if the suspect is literate, by providing a translated *Miranda* warning card.

The use of an LEP individual's bilingual friends, family members, children, neighbors or bystanders may be used only when a qualified bilingual member or authorized interpreter is unavailable and there is an immediate need to interview an LEP individual.

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323.9 CUSTODIAL INTERROGATIONS

Miscommunication during custodial interrogations may have a substantial impact on the evidence presented in a criminal prosecution. Only qualified bilingual members, or if none is available or appropriate, authorized interpreters shall be used during custodial interrogations. *Miranda* warnings shall be provided to suspects in their primary language by the qualified bilingual member or an authorized interpreter.

In order to ensure that translations during custodial interrogations are accurately documented and are admissible as evidence, interrogations should be recorded whenever reasonably possible.

323.10 BOOKINGS

When gathering information during the booking process, investigators should remain alert to the impediments that language barriers can create. In the interest of the arrestee's health and welfare, the safety and security of the facility, and to protect individual rights, it is important that accurate medical screening and booking information be obtained. Investigators should seek the assistance of a qualified bilingual member whenever there is concern that accurate information cannot be obtained or that booking instructions may not be properly understood by an LEP individual.

323.11 COMPLAINTS

The Bureau shall ensure that LEP individuals who wish to file a complaint regarding members of this Bureau are able to do so. The Bureau may provide an authorized interpreter or translated forms, as appropriate.

Investigations into such complaints shall be handled in accordance with the Personnel Complaints Policy § 1005. Authorized interpreters used for any interview with an LEP individual during an investigation should not be members of this Bureau.

Any notice required to be sent to an LEP individual as a complaining party pursuant to the Personnel Complaints Policy should be translated or otherwise communicated in a language-accessible manner.

323.12 TRAINING

In an effort to ensure that all employees in public contact positions (or having contact with those in custody) are properly trained, the Bureau will provide periodic training to personnel about Bureau LEP policies and procedures, including how to access Bureau-authorized interpreters and other available resources. LEP training will be provided for new employees.

323.13 SUPPLEMENTAL MATERIALS PROVIDED TO EMPLOYEES

The following materials will be made available to employees to assist in providing access and service to LEP individuals:

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- a. A list of Bureau bilingual employees, languages spoken and contact information can be found on the [DA Intranet](#).

Communications with Persons with Disabilities

324.1 PURPOSE AND SCOPE

This policy provides guidance to members when communicating with individuals with disabilities, including those who are deaf or hard of hearing, have impaired speech or vision, or are blind.

324.1.1 DEFINITIONS

Definitions related to this policy include:

Auxiliary aids - Tools used to communicate with people who have a disability or impairment. They include, but are not limited to, the use of gestures or visual aids to supplement oral communication; a notepad and pen or pencil to exchange written notes; a computer or typewriter; an assistive listening system or device to amplify sound; a teletypewriter (TTY) or videophones (video relay service or VRS); taped text; qualified readers; or a qualified interpreter.

Disability or impairment - A physical or mental impairment that substantially limits a major life activity, including hearing or seeing, regardless of whether the disabled person uses assistive or adaptive devices or auxiliary aids. Individuals who wear ordinary eyeglasses or contact lenses are not considered to have a disability (42 USC § 12102).

Qualified interpreter - A person who is able to interpret effectively, accurately and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include oral interpreters, translators, sign language interpreters and intermediary interpreters.

324.2 POLICY

It is the policy of the Orange County District Attorney Bureau of Investigation to reasonably ensure that people with disabilities, including victims, witnesses, suspects and arrestees have equal access to law enforcement services, programs and activities. Members must make efforts to communicate effectively with individuals with disabilities.

The Bureau will not discriminate against or deny any individual access to services, rights or programs based upon disabilities.

324.3 AMERICANS WITH DISABILITIES (ADA) COORDINATOR

Human Resources shall delegate certain responsibilities to an ADA Coordinator (28 CFR 35.107). The ADA Coordinator shall be appointed by, and directly responsible to, the Bureau Chief or authorized designee.

The responsibilities of the ADA Coordinator shall include, but not be limited to:

Communications with Persons with Disabilities

- a. Working with the County ADA Coordinator regarding the Orange County District Attorney Office efforts to ensure equal access to services, programs and activities.
- b. Developing reports, new procedures, or recommending modifications to this policy.
- c. Acting as a liaison with local disability advocacy groups or other disability groups regarding access to Bureau services, programs and activities.
- d. Ensuring that a list of qualified interpreter services is available to members of the Bureau. That list should include information regarding the following:
 1. Contact information
- e. Developing procedures that will enable members to access auxiliary aids or services, including qualified interpreters, and ensure the procedures are available to all members.
- f. Ensuring signage is posted in appropriate areas, indicating that auxiliary aids are available free of charge to people with disabilities.
- g. Ensuring appropriate processes are in place to provide for the prompt and equitable resolution of complaints and inquiries regarding discrimination in access to Bureau services, programs and activities.

324.4 FACTORS TO CONSIDER

Because the nature of any law enforcement contact may vary substantially from one situation to the next, members of this Bureau should consider all information reasonably available to them when determining how to communicate with an individual with a disability. Members should carefully balance all known factors in an effort to reasonably ensure people who are disabled have equal access to services, programs and activities. These factors may include, but are not limited to:

- a. Members should not always assume that effective communication is being achieved. The fact that an individual appears to be nodding in agreement does not always mean he/she completely understands the message. When there is any doubt, members should ask the individual to communicate back or otherwise demonstrate their understanding.
- b. The nature of the disability (e.g., deafness or blindness vs. hard of hearing or low vision).
- c. The nature of the law enforcement contact (e.g., emergency vs. non-emergency, custodial vs. consensual contact).
- d. The availability of auxiliary aids. The fact that a particular aid is not available does not eliminate the obligation to reasonably ensure access. However, in an emergency, availability may factor into the type of aid used.

324.5 INITIAL AND IMMEDIATE CONSIDERATIONS

Recognizing that various law enforcement encounters may be potentially volatile and/or emotionally charged, members should remain alert to the possibility of communication problems. Members should exercise special care in the use of all gestures and verbal and written communication, to minimize initial confusion and misunderstanding when dealing with any individual with known or suspected disabilities.

In a non-emergency situation, when a member knows or suspects an individual requires assistance to effectively communicate, the member shall identify the individual's choice of auxiliary aid or service.

Communications with Persons with Disabilities

The individual's preferred communication method must be honored unless another effective method of communication exists under the circumstances (28 CFR 35.160).

Factors to consider when determining whether an alternative method is effective include:

- a. The methods of communication usually used by the individual.
- b. The nature, length and complexity of the communication involved.
- c. The context of the communication.

In emergency situations involving an imminent threat to the safety or welfare of any person, members may use whatever auxiliary aids and services that reasonably appear effective under the circumstances. This may include, for example, exchanging written notes or using the services of a person who knows sign language but is not a qualified interpreter, even if the person who is deaf or hard of hearing would prefer a qualified sign language interpreter or another appropriate auxiliary aid or service. Once the emergency has ended, the continued method of communication should be reconsidered. The member should inquire as to the individual's preference and give primary consideration to that preference.

If an individual who is deaf, hard of hearing, or has impaired speech must be handcuffed while in the custody of the Orange County District Attorney Bureau of Investigation, consideration should be given, safety permitting, to placing the handcuffs in the front of the body to facilitate communication using sign language or writing.

324.6 TYPES OF ASSISTANCE AVAILABLE

Orange County District Attorney Bureau of Investigation members shall never refuse to assist an individual with disabilities who is requesting assistance. The Bureau will not charge anyone to receive auxiliary aids, nor shall they require anyone to furnish their own auxiliary aid or service as a condition for receiving assistance. The Bureau will make every reasonable effort to provide equal access and timely assistance to individuals who are disabled through a variety of services.

A person who is disabled may choose to accept Bureau-provided auxiliary aids or services or they may choose to provide their own.

Bureau-provided auxiliary aids or services may include, but are not limited to, the assistance methods described in this policy.

324.7 AUDIO RECORDINGS AND ENLARGED PRINT

The Bureau may develop audio recordings to assist people who are blind or have a visual impairment with accessing important information. If such a recording is not available, members may read aloud from the appropriate form, for example a personnel complaint form, or provide forms with enlarged print.

324.8 QUALIFIED INTERPRETERS

Communications with Persons with Disabilities

A qualified interpreter may be needed in lengthy or complex transactions (e.g., interviewing a victim, witness, suspect or arrestee), if the individual to be interviewed normally relies on sign language or speechreading (lip-reading) to understand what others are saying. The qualified interpreter should not be a person with an interest in the case or investigation involving the disabled individual. A person providing interpretation services may be required to establish the accuracy and trustworthiness of the interpretation in a court proceeding.

Qualified interpreters should be:

- a. Available within a reasonable amount of time but in no event longer than one hour if requested.
- b. Experienced in providing interpretation services related to law enforcement matters.
- c. Familiar with the use of VRS and/or video remote interpreting services.
- d. Certified in either American Sign Language (ASL) or Signed English (SE).
- e. Able to understand and adhere to the interpreter role without deviating into other roles, such as counselor or legal adviser.
- f. Knowledgeable of the ethical issues involved when providing interpreter services.

Members should use Bureau-approved procedures to request a qualified interpreter at the earliest reasonable opportunity, and generally not more than 15 minutes after a request for an interpreter has been made or it is reasonably apparent that an interpreter is needed. No individual who is disabled shall be required to provide his/her own interpreter (28 CFR 35.160).

324.9 TTY AND RELAY SERVICES

In situations where an individual without a disability would have access to a telephone (e.g., booking or attorney contacts), members must also provide those who are deaf, hard of hearing or have impaired speech the opportunity to place calls using an available TTY (also known as a telecommunications device for deaf people, or TDD). Members shall provide additional time, as needed, for effective communication due to the slower nature of TTY and TDD communications.

The Bureau will accept all TTY or TDD calls placed by those who are deaf or hard of hearing and received via a telecommunications relay service (28 CFR 35.162).

Note that relay services translate verbatim, so the conversation must be conducted as if speaking directly to the caller.

324.10 COMMUNITY VOLUNTEERS

Communications with Persons with Disabilities

Interpreter services may be available from community volunteers who have demonstrated competence in communication services, such as ASL or SE, and have been approved by the Bureau to provide interpreter services.

Where qualified interpreters are unavailable to assist, approved community volunteers who have demonstrated competence may be called upon when appropriate. However, Bureau members must carefully consider the nature of the contact and the relationship between the individual with the disability and the volunteer, to ensure that the volunteer can provide neutral and unbiased assistance.

324.11 FAMILY AND FRIENDS

While family or friends may offer to assist with interpretation, members should carefully consider the circumstances before relying on such individuals. The nature of the contact and relationship between the individual with the disability and the person offering services must be carefully considered (e.g., victim /suspect).

Children shall not be relied upon except in emergency or critical situations when there is no qualified interpreter reasonably available.

Adults may be relied upon when (28 CFR 35.160):

- a. There is an emergency or critical situation and there is no qualified interpreter reasonably available.
- b. The person with the disability requests that the adult interpret or facilitate communication and the adult agrees to provide such assistance, and reliance on that adult for such assistance is reasonable under the circumstances.

324.12 REPORTING

Whenever any member of this Bureau is required to complete a report or other documentation, and communication assistance has been provided, such services should be noted in the related report. Members should document the type of communication services utilized and whether the individual elected to use services provided by the Bureau or some other identified source. If the individual's express preference is not honored, the member must document why another method of communication was used.

All written communications exchanged in a criminal case shall be attached to the report or placed into evidence.

324.13 FIELD ENFORCEMENT

Field enforcement will generally include such contacts as traffic stops, pedestrian stops, serving warrants and restraining orders, crowd/traffic control and other routine field contacts that may involve individuals with disabilities. The scope and nature of these activities and contacts will inevitably vary.

Communications with Persons with Disabilities

The Bureau recognizes that it would be virtually impossible to provide immediate access to complete communication services to every member of this agency. Members and/or supervisors must assess each situation and consider the length, complexity and importance of the communication, as well as the individual's preferred method of communication, when determining the type of resources to use and whether a qualified interpreter is needed.

Although not every situation can be addressed in this policy, it is important that members are able to effectively communicate the reason for a contact, the need for information and the meaning or consequences of any enforcement action. For example, it would be meaningless to verbally request consent to search if the investigator is unable to effectively communicate with an individual who is deaf or hard of hearing and requires communications assistance.

If available, investigators should obtain the assistance of a qualified interpreter before placing an individual with a disability under arrest. Individuals who are arrested and are assisted by service animals should be permitted to make arrangements for the care of such animals prior to transport.

324.13.1 FIELD RESOURCES

Examples of methods that may be sufficient for transactions, such as checking a license or giving directions to a location or for urgent situations such as responding to a violent crime in progress, may, depending on the circumstances, include such simple things as:

- a. Hand gestures or visual aids with an individual who is deaf, hard of hearing or has impaired speech.
- b. Exchange of written notes or communications.
- c. Verbal communication with an individual who can speechread by facing the individual and speaking slowly and clearly.
- d. Use of computer, word processing, personal communication device or similar device to exchange texts or notes.
- e. Slowly and clearly speaking or reading simple terms to individuals who have a visual or mental impairment.

Members should be aware that these techniques may not provide effective communication as required by law and this policy depending on the circumstances.

324.14 CUSTODIAL INTERROGATIONS

In an effort to ensure that the rights of individuals who are deaf, hard of hearing or have speech impairment are protected during a custodial interrogation, this Bureau will provide interpreter services before beginning an interrogation, unless exigent circumstances exist or the individual has made a clear indication that he/she understands the process and desires to proceed without an interpreter. The use of a

Communications with Persons with Disabilities

video remote interpreting service should be considered, where appropriate, if a live interpreter is not available. *Miranda* warnings shall be provided to suspects who are deaf or hard of hearing by a qualified interpreter or by providing a written *Miranda* warning card.

In order to ensure that communications during custodial investigations are accurately documented and are admissible as evidence, interrogations should be recorded whenever reasonably possible. See guidance on recording custodial interrogations in the Investigation and Prosecution Policy § 600.

324.15 ARREST AND BOOKINGS

If an individual with speech or hearing disabilities is arrested, the arresting investigator shall use Bureau-approved procedures to provide a qualified interpreter at the place of arrest or booking as soon as reasonably practicable, unless the individual indicates that he/she prefers a different auxiliary aid or service or the investigator reasonably determines another effective method of communication exists under the circumstances.

When gathering information during the booking process, members should remain alert to the impediments that often exist when communicating with those who are deaf, hard of hearing, who have impaired speech or vision, are blind, or have other disabilities. In the interest of the arrestee's health and welfare, the safety and security of the facility and to protect individual rights, it is important that accurate medical screening and booking information be obtained. If necessary, members should seek the assistance of a qualified interpreter whenever there is concern that accurate information cannot be obtained or that booking instructions may not be properly understood by the individual.

Individuals who require and possess personally owned communication aids (e.g., hearing aids, cochlear processors) should be permitted to retain them while in custody.

324.16 COMPLAINTS

The Bureau shall ensure that individuals with disabilities who wish to file a complaint regarding members of this Bureau are able to do so. The Bureau may provide a qualified interpreter or forms in enlarged print, as appropriate. Complaints will be referred to the Human Resource ADA Coordinator.

Investigations into such complaints shall be handled in accordance with the Personnel Complaints Policy § 1005. Qualified interpreters used during the investigation of a complaint should not be members of this Bureau.

Child and Dependent Adult Safety

325.1 PURPOSE AND SCOPE

This policy provides guidelines to ensure that children and dependent adults are not left without appropriate care in the event their caregiver or guardian is arrested or otherwise prevented from providing care due to actions taken by members of this Bureau (Penal Code § 833.2(a)).

This policy does not address the actions to be taken during the course of a child abuse or dependent adult investigation. These are covered in the Child Abuse Policy § 313 and Senior and Disability Victimization Policy § 310.

325.2 POLICY

It is the policy of this Bureau to mitigate, to the extent reasonably possible, the stressful experience individuals may have when their parent or caregiver is arrested. The Orange County District Attorney Bureau of Investigation will endeavor to create a strong, cooperative relationship with local, state and community-based social services to ensure an effective, collaborative response that addresses the needs of those affected, including call-out availability and follow-up responsibilities.

325.3 PROCEDURES DURING AN ARREST

When encountering an arrest or prolonged detention situation, investigators should make reasonable attempts to determine if the arrestee is responsible for children or dependent adults. In some cases this may be obvious, such as when children or dependent adults are present. However, investigators should inquire if the arrestee has caregiver responsibilities for any children or dependent adults who are without appropriate supervision. The following steps should be taken (Penal Code § 13517.7(b)(1)):

- a. Inquire about and confirm the location of any children or dependent adults.
- b. Look for evidence of children and dependent adults. Investigators should be mindful that some arrestees may conceal the fact that they have a dependent for fear the individual may be taken from them.
- c. Consider inquiring of witnesses, neighbors, friends and relatives of the arrestee as to whether the person is responsible for a child or dependent adult.

Whenever reasonably possible, investigators should take reasonable steps to accomplish the arrest of a parent, guardian or caregiver out of the presence of his/her child or dependent adult. Removing children or dependent adults from the scene in advance of the arrest will generally ensure the best outcome for the individual.

Whenever it is safe to do so, investigators should allow the parent or caregiver to assure children or dependent adults that they will be provided care. If this is not safe or if the demeanor of the parent or

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caregiver suggests this conversation would be non-productive, the investigator at the scene should explain the reason for the arrest in age-appropriate language and offer reassurance to the child or dependent adult that he/she will receive appropriate care.

325.3.1 AFTER AN ARREST

Whenever an arrest is made, the investigator should take all reasonable steps to ensure the safety of the arrestee's disclosed or discovered children or dependent adults.

Investigators should allow the arrestee reasonable time to arrange for care of children and dependent adults. Temporary placement with family or friends may be appropriate. However, any decision should give priority to a care solution that is in the best interest of the child or dependent adult. In such cases the following guidelines should be followed:

- a. Allow the person reasonable time to arrange for the care of children and dependent adults with a responsible party, as appropriate.
 1. Unless there is evidence to the contrary (e.g., signs of abuse, drug use, unsafe environment), investigators should respect the parent or caregiver's judgment regarding arrangements for care. It is generally best if the child or dependent adult remains with relatives or family friends that he/she knows and trusts because familiarity with surroundings and consideration for comfort, emotional state and safety are important.
 2. Except when a court order exists limiting contact, the investigator should attempt to locate and place children or dependent adults with the non-arrested parent, guardian or caregiver.
- b. Provide for the immediate supervision of children or dependent adults until an appropriate caregiver arrives.
- c. Notify Child Protective Services or the Division of Aging and Adult Services, if appropriate.
- d. Notify the supervisor of the disposition of children or dependent adults.

If children or dependent adults are at school or another known location outside the household at the time of arrest, the arresting investigator should attempt to contact the school or other known location and inform the principal or appropriate responsible adult of the caregiver's arrest and of the arrangements being made for the care of the arrestee's dependent(s). The result of such actions should be documented in the associated report.

325.3.2 DURING THE BOOKING PROCESS

During the booking process the arrestee shall be allowed to make additional telephone calls to relatives or other responsible individuals as is reasonably necessary to arrange for the care of any child or dependent adult. These telephone calls should be given as soon as practicable and are in addition to any other telephone calls allowed by law (Penal Code § 851.5(c)).

If an arrestee is unable to resolve the care of any child or dependent adult through this process, a supervisor should be contacted to determine the appropriate steps to arrange for care. These steps may include additional telephone calls or contacting a local, county or state services agency.

Child and Dependent Adult Safety

325.3.3 REPORTING

- a. For all arrests where children are present or living in the household, the reporting member will document the following information:
 1. Name
 2. Sex
 3. Age
 4. Special needs (e.g., medical, mental health)
 5. How, where and with whom or which agency the child was placed
 6. Identities and contact information for other potential caregivers
 7. Notifications made to other adults (e.g., schools, relatives)
- b. For all arrests where dependent adults are present or living in the household, the reporting member will document the following information:
 1. Name
 2. Sex
 3. Age
 4. Whether he/she reasonably appears able to care for him/herself
 5. Disposition or placement information if he/she is unable to care for him/herself

325.3.4 SUPPORT AND COUNSELING REFERRAL

If, in the judgment of the handling investigators, the child or dependent adult would benefit from additional assistance, such as counseling services, contact with a victim advocate or a crisis telephone number, the appropriate referral information may be provided.

325.4 DEPENDENT WELFARE SERVICES

Whenever an arrestee is unwilling or incapable of arranging for the appropriate care of any child or dependent adult, the handling investigator should contact the appropriate welfare service or other social services to determine whether protective custody is appropriate (Welfare and Institutions Code § 305).

Under no circumstances should a child or dependent adult be left unattended or without appropriate care.

325.5 TRAINING

Child and Dependent Adult Safety

The Training Manager is responsible to ensure that all personnel of this Bureau who may be involved in arrests affecting children or dependent adults receive approved POST-approved training on effective safety measures when a parent, guardian or caregiver is arrested (Penal Code § 13517.7).

Disciplinary Policy

326.1 PURPOSE AND SCOPE

This policy provides employees of this Bureau with guidelines for their conduct in order that they may participate in meeting the goals of this Bureau in serving the community. This policy shall apply to all sworn and non-sworn members of this Bureau (including part-time, limited term and working retired employees). This policy is intended for internal use only and shall not be construed to increase or establish an employee's civil or criminal liability. Nor shall it be construed to create or establish a higher standard of safety or care. A violation of any portion of this policy may only serve as the basis for internal disciplinary and/or administrative action.

326.2 DISCIPLINE POLICY

The continued employment of every employee of this Bureau shall be based on conduct which reasonably conforms to the guidelines set forth herein. Failure of any employee to meet the guidelines set forth in this policy, whether on-duty or off-duty, may be cause for disciplinary action.

An employee's off-duty conduct shall be governed by this policy to the extent that it is related to act(s) that may materially affect or arise from the employee's ability to perform official duties or to the extent that it may be indicative of unfitness for his/her position.

326.3 CONDUCT WHICH MAY RESULT IN DISCIPLINE

The following list of causes for disciplinary action constitutes a portion of the Bureau's disciplinary standards. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for specific action or inaction that is detrimental to efficient Bureau service:

326.3.1 ATTENDANCE

- a. Leaving job to which assigned during duty hours without reasonable excuse and proper permission and approval.
- b. Unexcused or unauthorized absence on scheduled day(s) of work.
- c. Failure to report to work or to place of assignment at time specified and fully prepared to perform duties without reasonable excuse.

326.3.2 CONDUCT

- a. Unauthorized or unlawful fighting, threatening, or attempting to inflict unlawful bodily injury on another.
- b. It is recommended that any employee initiating any civil action for recovery of any damages or injuries incurred in the course and scope of employment to first notify the Bureau Chief of such action.

Disciplinary Policy

- c. Using Bureau of Investigation resources in association with any portion of their independent civil action. These resources include, but are not limited to, personnel, vehicles, equipment and non-subpoenaed records.
- d. Engaging in potentially dangerous "horseplay" resulting in injury or property damage or the reasonable possibility thereof.
- e. Unauthorized possession of, loss of or damage to Bureau property, or the property of others or endangering it through unreasonable carelessness or maliciousness.
- f. Failure of any employee to report activities on their own part, or the part of any other employee, where such activities may result in criminal prosecution or discipline under this policy.
- g. Failure of any employee to report activities which have resulted in official contact by any other law enforcement agency.
- h. The Bureau Chief must be notified when seeking restraining orders against individuals encountered in the line of duty.
- i. Discourteous, disrespectful or discriminatory treatment of any member of the public or any member of this Bureau.
- j. Unwelcome solicitation of a personal or sexual relationship while on-duty or through the use of one's official capacity.
- k. Engaging in on-duty sexual relations including, but not limited to, sexual intercourse, excessive displays of public affection or other sexual contact.

326.3.3 DISCRIMINATION

- a. Discrimination against any person because of their legally protected status, whether actual or perceived, including race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation, veteran status, citizenship status, use of family medical leave, military leave or any other legally protected classification under state or federal law (collectively referred to as "protected classification").

326.3.4 INTOXICANTS

- a. Reporting for work or being at work following the use of intoxicants where such use may impair the employee's ability to perform assigned duties, or where there is an immediate suspicion of ineffectiveness during public contact resulting from the use of intoxicants.
- b. Unauthorized possession or use of, or attempting to bring intoxicants to the work site, except an employee as authorized by the Bureau Chief. An employee who is authorized to consume intoxicants is not permitted to do so to such a degree that it may impair on-duty performance.
- c. Reporting for work or being at work following the use of a "controlled substance" or any drug (whether legally prescribed or otherwise) where such use impairs the employee's ability to perform assigned duties.
- d. Unauthorized possession or use of, or attempting to bring an illegal controlled substance or other illegal drug to any work site.

326.3.5 PERFORMANCE

Disciplinary Policy

- a. Unauthorized sleeping during on-duty time or assignments.
- b. Careless workmanship resulting in spoilage or waste of materials or work of an unacceptable nature as applicable to the nature of the work assigned.
- c. Refusal, failure, incompetence, inefficiency or delay in performing and/or carrying out proper orders, work assignments or instructions of supervisors without reasonable and bona fide excuse.
- d. Concealing or attempting to conceal defective work, removing or destroying it without permission.
- e. Disobedience or insubordination to constituted authorities or deliberate refusal to carry out any proper order from any supervisor or employee.
- f. The wrongful or unlawful exercise of authority on the part of any employee for malicious purpose, personal gain, willful deceit or any other improper purpose.
- g. Disparaging remarks or conduct concerning duly constituted authority to the extent that such conduct disrupts the efficiency of the Bureau, or subverts the good order, efficiency and discipline of the Bureau, or which would tend to discredit any member thereof.
- h. Knowingly making false or misleading statements which are reasonably calculated to harm or destroy the reputation, authority or official standing of the Bureau or members thereof.
- i. The falsification of records, the making of misleading entries or statements with the intent to deceive, or the willful and unauthorized destruction and/or mutilation of any Bureau record, book, paper or document.
- j. Wrongfully loaning, selling, giving away or appropriating any Bureau property for the personal use of the employee or any unauthorized person(s).
- k. The unauthorized use of any badge, uniform, identification card or other Bureau equipment or property for personal gain or any other improper purpose.
- l. The receipt or acceptance of a reward, fee or gift from any person for service incident to the performance of the employee's duties (lawful subpoena fees and authorized work permits excepted).
- m. Any knowing or negligent violation of the provisions of the Bureau Manual, Operating Procedures or other written directive of an authorized supervisor. (Employees shall familiarize themselves with and be responsible for compliance with each of the above and the Bureau shall make each available to the employee(s)).
- n. Work related dishonesty, including attempted or actual theft of Bureau property, services or the property of others.
- o. Criminal, dishonest, infamous or notoriously disgraceful conduct adversely affecting the employee /employer relationship (on or off-duty).
- p. Failure to disclose material facts or the making of any false or misleading statement on any Bureau application, examination form or other official document, report or form.
- q. Failure to take reasonable action while on-duty and when required by law, statute, resolution or approved Bureau practices or procedures.
- r. Substantiated, active, continuing association with or membership in "organized crime" and/or "criminal syndicates" with knowledge thereof, except as specifically directed and authorized by the Bureau.
- s. Offer or acceptance of a bribe or gratuity.
- t. Misappropriation or misuse of public funds.

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- u. Exceeding lawful peace officer powers by unreasonable, unlawful or excessive conduct.
- v. Unlawful gambling or unlawful betting on Bureau premises or at any work site.
- w. Substantiated, active, continuing association on a personal rather than official basis with a person or persons who engage in, or are continuing to engage in, serious violations of state or federal laws, where the employee has, or reasonably should have, knowledge of such criminal activities, except where specifically directed and authorized by the Bureau.
- x. Engaging in political activities during assigned working hours except as expressly authorized by County policy, the memorandum of understanding, or the Bureau Chief. This does not apply to a member's unpaid lunch hour; however, the member may not act in a representative capacity for the Bureau.
- y. Violating any misdemeanor or felony statute.
- z. Any other on-duty or off-duty conduct which any employee knows or reasonably should know is unbecoming a member of the Bureau or which is contrary to good order, efficiency or morale, or which tends to reflect unfavorably upon the Bureau or its members.
- aa. Any unexcused failure or refusal of an employee to properly perform the function and duties of an assigned position.
- ab. Intentional false or misleading statements to a supervisor.

326.3.6 SAFETY

- a. Failure to observe posted rules, signs, and written or oral safety instructions while on duty and/or within Bureau facilities or to use required protective clothing or equipment.
- b. Substantiated employee record of unsafe or improper driving habits or actions in the course of employment.

326.3.7 SECURITY

- a. Unauthorized, intentional release of designated confidential information, materials, data, forms or reports.

326.3.8 SUPERVISION RESPONSIBILITY

- a. Failure of a supervisor to take appropriate action to ensure that employees adhere to the policies and procedures of this Bureau and the actions of all personnel comply with all laws.
- b. Failure of a supervisor to timely report known misconduct of an employee to his or her immediate supervisor or to document such misconduct appropriately or as required by policy.
- c. The unequal or disparate exercise of authority on the part of a supervisor toward any employee for malicious or other improper purpose.

Shooting Policy

327.1 PURPOSE AND SCOPE

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

327.2 POLICY

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

- a. An investigator may use deadly force to protect him or herself or others from what they reasonably believe would be an immediate threat of death or serious bodily injury.
- b. An investigator may use deadly force to affect the arrest or prevent the escape of a suspected felon where the investigator has probable cause to believe that the suspect has committed or intends to commit a felony involving the inflicting of serious bodily injury or death. Under such circumstances, a verbal warning should precede the use of deadly force where feasible.
- c. To stop a dangerous animal to prevent injury or death to a human.
- d. With the approval of a supervisor, an investigator may euthanize an animal that is so badly injured that human compassion requires its removal from suffering and where other dispositions are impractical (Penal Code § 597.1(e)). Injured animals (with the exception of dogs and cats) may only be euthanized after a reasonable search to locate the owner has been made (Penal Code § 597.1(b)).
- e. For target practice at an approved range.

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

327.3 WARNING SHOTS

Generally, warning shots or shots fired for the purpose of summoning aid are discouraged.

327.4 MOVING VEHICLES

Shots fired at or from a moving vehicle are generally discouraged. This is not intended to restrict an investigator's right to use deadly force directed at the operator of a vehicle when it is reasonably perceived that the vehicle is being used as a weapon against the investigator or others.

327.5 DISCHARGING FIREARMS

Shooting Policy

In the event an investigator, while on or off-duty, under any circumstances (other than firing at an approved range), discharges his/her service weapon or any firearm resulting in property damage, or the wounding or death of a person, the following procedure shall be followed:

- a. The incident will be reported to the appropriate authorities as required.
- b. The investigator will, without delay, notify his/her supervisor or another supervisor within the Bureau.

In the event an investigator should accidentally or intentionally discharge any firearm which does not result in any damage or injury, he/she shall do the following:

- a. Report the incident to the appropriate authorities if required to do so by local ordinance.
- b. Inform his/her immediate supervisor immediately if on-duty or on the first working day following the incident if off-duty.

All shooting incidents will be reviewed by the Use of Force Review Board.

327.5.1 SUPERVISOR RESPONSIBILITIES

In the event of damaged property, or the wounding or death of a person, the following procedure shall be followed:

- a. A supervisor will respond to the scene. The supervisor will request that copies of all police reports relating to the incident be sent to the attention of the Bureau Chief.
- b. The supervisor shall submit a written report describing the incident to the Bureau Chief, prior to 10:00 am the first working day following the incident.

Off-Duty Law Enforcement Actions

328.1 PURPOSE AND SCOPE

The decision to become involved in a law enforcement action when off-duty can place an investigator as well as others at great risk and must be done with careful consideration. This policy is intended to provide guidelines for investigators of the Orange County District Attorney Bureau of Investigation with respect to taking law enforcement action while off-duty.

328.2 POLICY

Initiating law enforcement action while off-duty is generally discouraged. Investigators should not attempt to initiate enforcement action when witnessing minor crimes, such as suspected intoxicated drivers, reckless driving or minor property crimes. Such incidents should be promptly reported to the appropriate law enforcement agency.

Investigators are not expected to place themselves in unreasonable peril. However, any sworn member of this Bureau who becomes aware of an incident or circumstance that he/she reasonably believes poses an imminent threat of serious bodily injury or death, or significant property damage may take reasonable action to minimize the threat.

When public safety or the prevention of major property damage requires immediate action, investigators should first consider reporting and monitoring the activity and only take direct action as a last resort.

328.3 FIREARMS

Investigators of this Bureau may carry firearms while off-duty in accordance with federal regulations and Bureau policy. All firearms and ammunition must meet guidelines as described in the Bureau Firearms Policy § 303. When carrying firearms while off-duty investigators shall also carry their Bureau-issued badge and identification.

Investigators should refrain from carrying firearms when the consumption of alcohol is likely or when the need to carry a firearm is outweighed by safety considerations. Firearms shall not be carried by any investigator who has consumed an amount of an alcoholic beverage or taken any drugs or medications or any combination thereof that would tend to adversely affect the investigator's senses or judgment.

328.4 DECISION TO INTERVENE

There is no legal requirement for off-duty investigators to take law enforcement action. However, should investigators decide to intervene, they must evaluate whether the action is necessary or desirable, and should take into consideration the following:

- a. The tactical disadvantage of being alone and the fact there may be multiple or hidden suspects.
- b. The inability to communicate with responding units.

Off-Duty Law Enforcement Actions

- c. The lack of equipment, such as handcuffs, taser, OC or ASP.
- d. The lack of cover.
- e. The potential for increased risk to bystanders if the off-duty investigator were to intervene.
- f. Unfamiliarity with the surroundings.
- g. The potential for the off-duty investigator to be misidentified by other peace officers or members of the public.

Investigators should consider waiting for on-duty uniformed officers to arrive, and gather as much accurate intelligence as possible instead of immediately intervening.

328.4.1 INTERVENTION PROCEDURE

If involvement is reasonably necessary, the investigator should attempt to call or have someone else call 9-1-1 to request immediate assistance. The dispatcher should be informed that an off-duty investigator is on-scene and should be provided a description of the officer if possible.

Whenever practicable, the investigator should loudly and repeatedly identify him/herself as an Orange County District Attorney investigator/police officer until acknowledged. Official identification should also be displayed.

328.4.2 INCIDENTS OF PERSONAL INTEREST

Investigators should refrain from handling incidents of personal interest, (e.g., family or neighbor disputes) and should remain neutral. In such circumstances, investigators should call the responsible agency to handle the matter.

328.4.3 NON-SWORN RESPONSIBILITIES

Non-sworn personnel should not become involved in any law enforcement actions while off-duty except to notify the local law enforcement authority and remain at the scene, if safe and practicable.

328.4.4 OTHER CONSIDERATIONS

When encountering a non-uniformed investigator in public, uniformed investigators should wait for acknowledgement by the non-uniformed investigator in case he/she needs to maintain an undercover capability.

328.5 REPORTING

Any off-duty investigator who engages in any law enforcement activity, regardless of jurisdiction, shall notify their direct supervisor as soon as practicable. The Division commander shall determine whether a report should be filed by the employee.

Off-Duty Law Enforcement Actions

Investigators should cooperate fully in criminal investigations with the agency having jurisdiction in providing statements or reports as requested or as appropriate.

Notwithstanding the foregoing, a member cannot be disciplined for exercising his/her Constitutional rights, including but not limited to the 5th Amendment right against forced self-incrimination.

Report Preparation

329.1 PURPOSE AND SCOPE

The purpose of reports is to document sufficient information to refresh the member's memory and to provide sufficient information for follow-up investigation and successful prosecution.

329.2 REPORT PREPARATION

All members should ensure that the reports are a summary of events and contain sufficient details of the facts and free from errors.

All reports shall accurately reflect the identity of the persons involved, all pertinent information seen, heard or assimilated by any other sense and any actions taken. Members should summarize interviews but not suppress, conceal or distort the facts of any reported incident, nor shall any member make a false report orally or in writing. Generally, the reporting member's opinions should not be included in reports unless specifically identified as such.

In preparing reports, members shall abide by policy section §606, Brady Material Disclosure and Policy Section §600 Investigation and Prosecution.

329.3 REQUIRED REPORTING

A Bureau generated case number shall be created on any case requiring any type of documentation, investigation, follow-up or trial preparation.

Written reports are required in all of the following situations on the appropriate Bureau approved forms, unless otherwise approved by a supervisor:

- a. All arrests
- b. Investigations of any crimes
- c. Interviews of witnesses
- d. Collection of evidence
- e. Unusual circumstances or suspicious activity
- f. Use of force
- g. Any type of documentation required for G.R.I.P. (e.g. Greeter report or home visit)
- h. Taskforce members will complete reports as established by the involved taskforce

329.4 POLICY OF EXPEDITIOUS REPORTING

In general, all members shall act with promptness and efficiency in the preparation and processing of all reports. Reports shall be processed according to established priorities. Priority reports include all cases where a suspect is in custody and booked into any custodial facility such as jail, juvenile hall, or a mental hospital. All reports are expected to be accurate, detailed, thorough and organized.

Report Preparation

329.5 REPORT CORRECTIONS

Supervisors shall review reports for content and grammar. If a correction is necessary, the reviewing supervisor should return the report to the reporting member along with the reasons for rejection as soon as practical. It shall be the responsibility of the originating member to ensure that any report returned for correction is processed in a timely manner. Corrected reports should be returned to the supervisor requesting the corrections. Once the supervisor has approved the report, it is considered the final version and cannot be edited.

329.5.1 REPORT CHANGES OR ALTERATIONS

Once a report has been approved by a supervisor it shall not be modified or altered except by way of a supplemental report.

329.6 REPORT WRITING-RMS

The following establishes policies related to report writing and the use of the Records Management System (RMS).

329.6.1 CASE REPORTS

In preparing reports, the employee shall provide the following:

- a. Type of report
 1. Incident/Crime Report
 2. Interview Report
 3. Supplemental Report
 4. Property Report
 5. Greeter Report
 6. G.R.I.P. Report
 7. Child Abduction
 8. Trial Prep
 9. Special Assignments Report
- b. Who authored the report with full name and badge number (Smith, John 145)
- c. Date the report was prepared
- d. Type of crime or incident
- e. Case number
 1. The case number will be electronically generated at the time of case initiation.
- f. Related case numbers (e.g. District Attorney case number, court case number, outside agency case number, etc.)
- g. Details
 1. All of the facts shall be completely set forth in this section including how the case was received, statements of witnesses and suspects, description of evidence, suspect's identification and physical description.

Report Preparation

329.6.2 CASE NUMBERING

All case numbers will be generated in the RMS system automatically for all types of reports and work requests in sequential order (20-00001).

329.7 INITIATION OF A CASE

- a. All trial prep cases will be entered into RMS as a “Trial Prep-Approval” or a “Trial Prep-no-Approval” template and the cases will be assigned a case number.
 1. Notes will be added to the case in the RMS system.
- b. When a pre-filing investigative request is made to the Bureau based on an investigation initiated and documented by an agency other than the District Attorney’s Office, the member shall document work done by creating an RMS case number and either using a Trial Prep template or Incident /Crime report template, depending on the circumstance. The originating agency’s report number should be documented on the face sheet as the associated case number, and documented in the narrative or notes section.
- c. Any criminal case investigated by the Orange County District Attorney’s Office Bureau of Investigation shall be documented on the appropriate RMS template.

Specialty Impact Munitions (SIM) Less-Lethal

330.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of Specialty Impact Munitions (SIM) that are described in this policy and in policy 704. This policy covers the use of .68 mm pepper balls and 40 mm munitions and their associated launchers. The use of such a device is intended to mitigate the number of potential serious injuries to Bureau investigators, the subject, and other individuals.

330.2 POLICY

A SIM may be used in any of the following circumstances, when the circumstances perceived by the investigator at the time indicate that such application is reasonably necessary to:

- a. Control a subject which is violent or is actively resisting.
- b. Control a subject who has demonstrated, by words or action, an intention to be violent or to physically resist, and reasonably appears to present the potential to harm investigators, themselves or others.
- c. Disarm a suspect or to control a subject who is reasonably believed to be armed.
- d. Stop a fleeing subject who is wanted for a serious crime (Mere flight from a pursuing investigator, without other known circumstances or factors, is not good cause for the use of a SIM to apprehend an individual).
- e. Gain compliance during tactical situations that include but are not limited to a riot or civil unrest.
- f. Control dangerous animals.
- g. Be used on objects to gain a tactical advantage (e.g., windows, lights, etc.).

Additional Factors to consider when utilizing a SIM include, but are not limited to:

- a. Location of the subject(s)
- b. Ability to safely approach the subject(s)
- c. Need to immediately control the subject(s)

While the option to consider a less lethal system is available, nothing in this policy shall require any investigator to deploy such an option when the investigator reasonably believes, based on the totality of the circumstances, that the use of deadly force is necessary, in accordance with policy 300.

330.2.1 CROWD CONTROL

Specialty Impact Weapons (SIM Less-Lethal)

1. Kinetic energy projectiles and chemical agents shall not be used to disperse any assembly, protest, or demonstration and shall not be used solely due to a violation of an imposed curfew, verbal threat, or noncompliance with a law enforcement directive.

Specialty Impact Munitions (SIM) Less-Lethal

2. Kinetic energy projectiles and chemical agents shall only be deployed by investigators that have received training on their proper use for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and only in accordance with all of the following requirements:
 3. Deescalation techniques or other alternatives to force have been attempted when objectively reasonable, and have failed.
 4. Repeated audible announcements are made announcing the intent to use kinetic energy projectiles and chemical agents and the type to be used, when objectively reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages if appropriate.
 5. Persons are given an objectively reasonable opportunity to disperse and leave the scene.
 6. An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles or chemical agents are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.
 7. Kinetic energy projectiles and chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.
 8. Members shall minimize the possible incidental impact of their use of kinetic energy projectiles and chemical agents on bystanders, medical personnel, journalists, or other unintended targets.
 9. An objectively reasonable effort has been made to extract individuals in distress.
 10. Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable to do so.
 11. Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs

The Bureau shall, within 60 days of each incident, publish a summary on its internet website of all instances in which an investigator uses a kinetic energy projectile or chemical agent for crowd control. The Bureau may extend that period for another 30 days for just cause, but in no case longer than 90 days from the incident.

330.3 TRAINING, ISSUANCE AND DEPLOYMENT

Only investigators assigned to the AB 109 Task Force, Dignitary Protection Team (DPT), or other investigators who have successfully completed annual Bureau approved training may be issued, use or carry SIM and SIM launchers. SIM's will be available for checkout as needed.

It is recommended that investigators who have successfully completed annual Bureau approved training, check out a SIM when conducting search warrants, arrest warrants, probation and parole sweeps, special events, or site security.

Specialty Impact Munitions (SIM) Less-Lethal

Investigators shall only use the SIM's and SIM munitions that have been approved by the Bureau.

- a. All SIMS shall be clearly and distinctly marked to differentiate them from the duty weapon and any other device.
- b. Investigators should never hold both a firearm and the SIM at the same time, unless lethal force is justified.

330.4 APPROVED LAUNCHERS AND MUNITIONS

The approved launchers are the .68 caliber PepperBall™ VKS (Variable Kinetic System) and the Defense Technology™ 40 mm LMT Tactical Single Launcher. The approved munitions are the PepperBall™ classic live .68 caliber projectile, the PepperBall™ inert .68 caliber projectile and the Defense Technology™ eXact iImpact 40 mm standard range sponge round. Only Bureau approved specialty impact munitions shall be carried and deployed. The munitions should be inspected/verified prior to deploying the SIM launcher. Only an approved SIM should be fired from SIM launchers.

330.5 VERBAL WARNINGS

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

- a. Provide the individual with an opportunity to voluntarily comply.
- b. Provide other investigators at the scene with a warning that a SIM may be deployed.

The fact that a verbal warning was given or the reasons it was not given should be documented by the investigator deploying a SIM in the related report.

330.6 USE OF A SIM

A SIM has limitations and restrictions requiring consideration before its use. SIM should only be used when its operator can safely approach the subject within the operational range of the projector. Although SIM is generally effective in controlling most individuals, users should be aware that the deployment of a SIM may not achieve the intended results and be prepared with other options.

330.6.1 TARGETING CONSIDERATIONS

The head, neck, throat, spine, heart, kidneys and groin should not be intentionally targeted except when the officer reasonably believes that the subject poses an imminent threat of serious bodily harm or death to the investigator or others. Care should be taken to avoid the abdomen of females known to be or who are obviously pregnant.

The attempted target area and the actual area impacted should be documented in a report.

Specialty Impact Munitions (SIM) Less-Lethal

330.6.2 DEPLOYMENT DISTANCES

Investigators should generally follow the manufacturer's recommendations regarding minimum deployment distances and target areas: however, any target area or distance may be considered when it reasonably appears necessary to accomplish immediate incapacitation in order to prevent serious injury to the investigator or others.

330.6.3 SPECIAL DEPLOYMENT CONSIDERATIONS

The use of a SIM on certain individuals should generally be avoided unless the totality of the circumstances indicates other available options would reasonably appear ineffective or would present a greater danger to the investigator, the subject, or others, and the investigator reasonably believes that the need to control the individual outweighs the risks of using a SIM. These individuals include:

- a. Individuals who are known to be pregnant.
- b. Elderly individuals or obvious juveniles.
- c. Individuals who are handcuffed.
- d. Individuals whose position or activity may result in collateral injury (e.g. falls from height or operating a vehicle).

330.6.4 MULTIPLE APPLICATIONS OF FORCE

Investigators should reassess the situation prior to subsequent munition deployments.

330.6.5 DANGEROUS ANIMALS

A SIM may be deployed against an animal as part of a plan or in a situation to deal with a potentially dangerous animal if the animal reasonably appears to pose an imminent threat to human safety and alternative methods are not reasonably available or would likely be ineffective. A supervisor shall be notified and a memorandum detailing the incident shall be completed when a SIM is used against an animal.

330.6.6 ALTERNATIVE TACTICAL USE

In certain incidents, the SIM may be used on objects to gain a tactical advantage (e.g., windows, lights, etc.). Investigators who use the SIM for this purpose should consider the trajectory of the projectile(s), the possible trajectory of the object(s) struck, and the distance of subjects and/or investigators from the targeted object. A supervisor shall be notified and a memorandum detailing the incident shall be completed when a SIM is used on an object.

330.6.7 EVIDENCE COLLECTION

Investigators should photograph, collect and book SIM projectile(s) and cartridge casing(s) into evidence. Investigators should also photograph the area of deployment (scene) and the subject to document injuries or lack thereof. The inability to do so should be documented in the report.

330.6.8 OFF-DUTY CONSIDERATIONS

Specialty Impact Munitions (SIM) Less-Lethal

Generally, investigators are not authorized to use Bureau SIM devices while off-duty due to tactical concerns.

330.6.9 NOTIFICATION

With the exception of training, anytime a SIM is fired the employee shall notify a supervisor as soon as practical.

330.7 MEDICAL TREATMENT

If an individual is struck with a SIM, appropriate medical attention shall be administered as soon as practical and a medical clearance shall be obtained prior to booking. Persons who have been struck or otherwise affected by the use of pepper balls should be promptly provided with clean water to cleanse the affected areas. Those persons who complain of further severe effects shall be examined by appropriate medical personnel.

330.7.1 POST-APPLICATION NOTICE

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

330.8 DOCUMENTATION OF LESS-LETHAL MUNITIONS USE

Discharge of a less lethal weapon for any reason other than an approved training exercise shall be documented and treated like any other use of force incident.

All relevant information shall be documented on a Bureau crime report, incident report, arrest, or follow-up report.

The report should include:

- a. Circumstances that gave rise to the use of less lethal munitions.
- b. Describe any de-escalation techniques, crisis intervention tactics, and other alternative to force that were used in an attempt to persuade the subject to voluntarily comply.
- c. Explain ineffective use of force options employed/or considered but believed to be impractical or ineffective.
- d. The number of impact munitions fired, by which investigator(s), and at what distances. Include how many projectiles struck the subject.
- e. The distance from the subject.
- f. The area targeted and the actual area impacted.
- g. What medical attention was provided.

Specialty Impact Munitions (SIM) Less-Lethal

330.9 SUPERVISOR RESPONSIBILITIES

When possible, a supervisor should respond to all incidents where a SIM was used. With the exception of training, a supervisor should review each incident where a SIM has been used and shall complete a use of force review when a SIM is deployed at a person. The supervisor shall document an incident when a SIM is used on an animal or fired at an object.

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331.1 PURPOSE AND SCOPE

This policy is designed to assist in identifying and handling crimes motivated by hate or other bias toward individuals and groups with legally defined protected characteristics, to define appropriate steps for assisting victims, and to provide a guide to conducting related investigations. It outlines the general policy framework for prevention, response, accessing assistance, victim assistance and follow-up, and reporting as related to law enforcement's role in handling hate crimes. It also serves as a declaration that hate crimes are taken seriously and demonstrates how the Orange County District Attorney Bureau of Investigation may best use its resources to investigate and solve an offense, in addition to building community trust and increasing police legitimacy (Penal Code § 13519.6; Penal Code § 422.87).

331.1.1 DEFINITION AND LAWS

In accordance with Penal Code § 422.55; Penal Code § 422.56; Penal Code § 422.6; and Penal Code § 422.87, for purposes of all other state law, unless an explicit provision of law or the context clearly requires a different meaning, the following shall apply:

Bias motivation - Bias motivation is a pre-existing negative attitude toward actual or perceived characteristics referenced in Penal Code § 422.55. Depending on the circumstances of each case, bias motivation may include but is not limited to hatred, animosity, resentment, revulsion, contempt, unreasonable fear, paranoia, callousness, thrill-seeking, desire for social dominance, desire for social bonding with those of one's "own kind," or a perception of the vulnerability of the victim due to the victim being perceived as being weak, worthless, or fair game because of a protected characteristic, including but not limited to disability or gender.

Disability - Disability includes mental disability and physical disability as defined in Government Code § 12926, regardless of whether those disabilities are temporary, permanent, congenital, or acquired by heredity, accident, injury, advanced age, or illness.

Disability bias - In recognizing suspected disability-bias hate crimes, investigators should consider whether there is any indication that the perpetrator was motivated by hostility or other bias, occasioned by factors such as but not limited to dislike of persons who arouse fear or guilt, a perception that persons with disabilities are inferior and therefore "deserving victims," a fear of persons whose visible traits are perceived as being disturbing to others, or resentment of those who need, demand, or receive alternative educational, physical, or social accommodations.

In recognizing suspected disability-bias hate crimes, investigators should consider whether there is any indication that the perpetrator perceived the victim to be vulnerable and, if so, if this perception is grounded, in whole or in part, in anti-disability bias. This includes but is not limited to situations where a perpetrator targets a person with a particular perceived disability while avoiding other vulnerable-appearing persons, such as inebriated persons or persons with perceived disabilities different from those

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of the victim. Such circumstances could be evidence that the perpetrator's motivations included bias against persons with the perceived disability of the victim and that the crime must be reported as a suspected hate crime and not a mere crime of opportunity.

Gender - Gender means sex and includes a person's gender identity and gender expression.

Gender expression - Gender expression means a person's gender-related appearance and behavior, regardless of whether it is stereotypically associated with the person's assigned sex at birth.

Gender identity - Gender identity means each person's internal understanding of their gender, or the perception of a person's gender identity, which may include male, female, a combination of male and female, neither male nor female, a gender different from the person's sex assigned at birth, or transgender (2 CCR § 11030).

Hate crime - "Hate crime" includes but is not limited to a violation of Penal Code § 422.6, and means a criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim:

- a. Disability
- b. Gender
- c. Nationality
- d. Race or ethnicity
- e. Religion
- f. Sexual orientation
- g. Association with a person or group with one or more of these actual or perceived characteristics:
 1. "Association with a person or group with one or more of these actual or perceived characteristics" includes advocacy for, identification with, or being on the premises owned or rented by, or adjacent to, any of the following: a community center, educational facility, family, individual, office, meeting hall, place of worship, private institution, public agency, library, or other entity, group, or person that has, or is identified with people who have, one or more of the characteristics listed in the definition of "hate crime" under paragraphs 1 to 6, inclusive, of Penal Code § 422.55(a).

Note: A "hate crime" need not be motivated by hate but may be motivated by any bias against a protected characteristic.

Hate incident - A hate incident is an action or behavior motivated by hate or bias but legally protected by the First Amendment right to freedom of expression. Examples of hate incidents include:

- Name-calling
- Insults and epithets
- Distributing hate material in public places
- Displaying hate material on your own property

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Hate speech - The First Amendment to the U.S. Constitution protects most speech, even when it is disagreeable, offensive, or hurtful. The following types of speech are generally not protected:

- Fighting words
- True threats
- Perjury
- Blackmail
- Incitement to lawless action
- Conspiracy
- Solicitation to commit any crime

In whole or in part - "In whole or in part because of" means that the bias motivation must be a cause in fact of the offense whether or not other causes also exist. When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the particular result. There is no requirement that the bias be a main factor, or that a crime would not have been committed but for the actual or perceived characteristic.

Nationality - Nationality means country of origin, immigration status, including citizenship, and national origin.

Race or ethnicity - Race or ethnicity includes ancestry, color, and ethnic background.

Religion - Religion includes all aspects of religious belief, observance, and practice and includes agnosticism and atheism.

Religious bias - In recognizing suspected religion-bias hate crimes, investigators should consider whether there were targeted attacks on, or biased references to, symbols of importance to a particular religion or articles considered of spiritual significance in a particular religion (e.g., crosses, hijabs, Stars of David, turbans, head coverings, statues of the Buddha, forehead markings).

Sexual orientation - Sexual orientation means heterosexuality, homosexuality, or bisexuality.

Victim - Victim includes but is not limited to:

- Community center
- Educational facility
- Entity
- Family
- Group
- Individual

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- Office
- Meeting hall
- Person
- Place of worship
- Private institution
- Public agency
- Library
- Other victim or intended victim of the offense

331.2 POLICY

It is the policy of this Bureau to safeguard the rights of all individuals irrespective of their disability, gender, nationality, race or ethnicity, religion, sexual orientation, and/or association with a person or group with one or more of these actual or perceived characteristics. Any acts or threats of violence, property damage, harassment, intimidation, or other crimes motivated by hate or bias should be viewed very seriously and given high priority.

This Bureau will employ reasonably available resources and vigorous law enforcement action to identify and arrest hate crime perpetrators. Also, recognizing the particular fears and distress typically suffered by victims, the potential for reprisal and escalation of violence, and the far-reaching negative consequences of these crimes on the community, this Bureau should take all reasonable steps to attend to the security and related concerns of the immediate victims and their families as feasible.

All investigators are required to be familiar with the policy and use reasonable diligence to carry out the policy unless directed by the Bureau Chief or other command-level officer to whom the Bureau Chief formally delegates this responsibility.

331.3 PLANNING AND PREVENTION

In order to facilitate the guidelines contained within this policy, Bureau members will continuously work to build and strengthen relationships with the community, engage in dialogue, and provide education to the community about this policy. Bureau personnel are also encouraged to learn about the inherent issues concerning their communities in relation to hate crimes.

Although hate incidents are not criminal events, they can be indicators of, or precursors to, hate crimes. Hate incidents should be investigated and documented as part of an overall strategy to prevent hate crimes.

331.3.1 HATE CRIMES COORDINATOR

The Professional Standards Division Supervisor or the authorized designee will serve as the Hate Crimes Coordinator. The responsibilities of the Hate Crimes Coordinator should include but not be limited to (Penal Code § 422.87):

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- a. Coordinating with the Training Manager to develop a schedule of required hate-crime training and include in a training plan recognition of hate crime bias characteristics, including information on general underreporting of hate crimes.
- b. Taking reasonable steps to ensure hate crime data is reported to the Department of Justice as mandated.
 1. Ensure the California Department of Justice crime data is posted monthly on the Bureau website (Penal Code § 13023).
- c. Reporting any suspected multi-mission extremist crimes to the Orange County Intelligence Assessment Center (OCIAAC) or other appropriate resource; and verifying that such data is transmitted to the Joint Regional Information Exchange System (JRIES).
- d. Maintaining the Bureau's supply of up-to-date hate crimes brochures ([English](#)) ([Spanish](#)) (Penal Code § 422.92; Penal Code § 422.87).
- e. Submitting required hate crime materials to the California Department of Justice in accordance with the timeline established by state law (Penal Code § 13023).
- f. Annually assessing this policy, including:
 1. Keeping abreast of POST model policy framework for hate crimes for revisions or additions, including definitions, responsibilities, training resources, the supplemental hate crime report, and planning and prevention methods.

331.4 RESPONSE, VICTIM ASSISTANCE, AND FOLLOW-UP

331.4.1 INITIAL RESPONSE

First responding investigators should know the role of all Bureau personnel as they relate to the Bureau's investigation of hate crimes and/or incidents. Responding investigators should evaluate the need for additional assistance and, working with supervision and/or investigators, access needed assistance if applicable.

At the scene of a suspected hate or bias crime, investigators should take preliminary actions reasonably deemed necessary, including but not limited to the following:

- a. Use agency [Hate Crime Checklist](#) (per Penal Code § 422.87) to assist in the investigation of any hate crime (see Appendix).
- b. Stabilize the victims and request medical attention when necessary.
- c. Properly protect the safety of victims, witnesses, and perpetrators.
 1. Assist victims in seeking a Temporary Restraining Order (if applicable).
- d. Notify the Special Prosecutions Unit, depending on the nature and seriousness of the offense and its potential inflammatory and related impact on the community.
- e. Properly protect, preserve, and process the crime scene, and remove all physical evidence of the incident as soon as possible after the offense is documented. If evidence of an inflammatory nature

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cannot be physically removed, the property owner should be contacted to facilitate removal or covering as soon as reasonably possible. Bureau personnel should follow up with the property owner to determine if this was accomplished in a timely manner.

- f. Collect and photograph physical evidence or indicators of hate crimes such as:
 1. Hate literature.
 2. Spray paint cans.
 3. Threatening letters.
 4. Symbols used by hate groups.
- g. Identify criminal evidence on the victim.
- h. Request the assistance of translators or interpreters when needed to establish effective communication with witnesses, victims, or others as appropriate.
- i. Conduct a preliminary investigation and record pertinent information including but not limited to:
 1. Identity of suspected perpetrators.
 2. Identity of witnesses, including those no longer at the scene.
 3. The offer of victim confidentiality per Government Code § 7923.615.
 4. Prior occurrences in this area or with this victim.
 5. Statements made by suspects; exact wording is critical.
 6. The victim's protected characteristics and determine if bias was a motivation "in whole or in part" in the commission of the crime.
- j. Adhere to Penal Code § 422.93, which protects hate crime victims and witnesses from being reported to federal immigration authorities if they have not committed any crime under state law.
- k. Provide information regarding immigration remedies available to victims of crime (e.g., U-Visa, T-Visa, S-Visa).
- l. Provide the Bureau's Hate Crimes Brochure ([English](#)) ([Spanish](#)) (per Penal Code § 422.92) if asked, if necessary, or per policy.
- m. Utilize proper techniques for interviewing people with disabilities and be aware of and provide appropriate accommodations (e.g., ADA standards, Braille, visuals, translators for the deaf or hard of hearing).
- n. Document any suspected multi-mission extremist crimes.

331.4.2 INVESTIGATION

Investigators at the scene of, or performing follow-up investigation on, a suspected hate or bias crime or hate incident should take all actions deemed reasonably necessary, including but not limited to the following:

- a. Consider typologies of perpetrators of hate crimes and incidents, including but not limited to thrill, reactive/defensive, and mission (hard core).
- b. Utilize investigative techniques and methods to handle hate crimes or hate incidents in a professional manner.
- c. Utilize proper techniques for interviewing people with disabilities and be aware of and provide appropriate accommodations (e.g., ADA standards, Braille, visuals, translators for the deaf or hard of hearing).

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- d. Properly investigate any report of a hate crime committed under the color of authority per Penal Code § 422.6 and Penal Code § 13519.6.
- e. Document physical evidence or indicators of hate crimes, such as:
 - 1. Hate literature.
 - 2. Spray paint cans.
 - 3. Threatening letters.
 - 4. Symbols used by hate groups.
 - 5. Desecration of religious symbols, objects, or buildings.
- f. Request the assistance of translators or interpreters when needed to establish effective communication.
- g. Conduct a preliminary investigation and record information regarding:
 - 1. Identity of suspected perpetrators.
 - 2. Identity of witnesses, including those no longer at the scene.
 - 3. Offer of victim confidentiality per Government Code § 7923.615.
 - 4. Prior occurrences, in this area or with this victim.
 - 5. Statements made by suspects; exact wording is critical.
 - 6. Document the victim's protected characteristics.
- h. Provide victim assistance and follow-up.
- i. Canvass the area for additional witnesses.
- j. Examine suspect's social media activity for potential evidence of bias motivation.
- k. Coordinate the investigation with Bureau, state, and regional intelligence operations. These sources can provide the investigator with an analysis of any patterns, organized hate groups, and suspects potentially involved in the offense.
- l. Coordinate the investigation with the crime scene investigation unit (if applicable) or other appropriate units of the Bureau.
- m. Determine if the incident should be classified as a hate crime.
- n. Take reasonable steps to provide appropriate assistance to hate crime victims, including the following measures:
 - 1. Contact victims periodically to determine whether they are receiving adequate and appropriate assistance.
 - 2. Provide ongoing information to victims about the status of the criminal investigation.
 - 3. Provide victims and any other interested persons the brochure on hate crimes ([English](#)) ([Spanish](#)) per Penal Code § 422.92 and information on any local advocacy groups (if asked).
- o. Document any suspected multi-mission extremist crimes.
- p. Coordinate with other law enforcement agencies in the area to assess patterns of hate crimes and /or hate incidents, and determine if organized hate groups are involved.

331.4.3 SUPERVISION

The supervisor shall confer with the initial responding investigator and take reasonable steps to ensure that necessary preliminary actions have been taken. The supervisor shall request any appropriate personnel necessary to accomplish the following:

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- a. Provide immediate assistance to the crime victim by:
 1. Expressing the Bureau's official position on the importance of these cases and the measures that will be taken to apprehend the perpetrators.
 2. Expressing the Bureau's interest in protecting victims' anonymity (confidentiality forms, Government Code § 7923.615) to the extent reasonably possible. Allow the victims to convey their immediate concerns and feelings.
 3. Identifying individuals or agencies that may provide victim assistance and support. Local victim assistance resources may include family members or close acquaintances, clergy, or a bureau chaplain, as well as community service agencies that provide shelter, food, clothing, child care, or other related services (per Penal Code § 422.92).
- b. Take reasonable steps to ensure that all relevant facts are documented on an incident and/or arrest report and make an initial determination as to whether the incident should be classified as a hate crime for federal and state bias-crimes reporting purposes.
- c. Verify the Special Prosecutions Unit has been notified, depending on the nature and seriousness of the offense and its potential inflammatory and related impact on the community.
- d. In cases of large-scale hate crime waves, or in circumstances where the potential exists for subsequent hate crimes or incidents, consider directing resources to protect vulnerable sites (such as requesting local law enforcement check specific locations that could become targets).
- e. Verify hate crimes are being properly reported, including reporting to the Department of Justice, pursuant to Penal Code § 13023.
- f. Verify adherence to Penal Code § 422.93, which protects hate crime victims and witnesses from being reported to federal immigration authorities if they have not committed any crime under state law. Supervisors should also be aware of the immigration remedies available to victims of crime (e. g., U-Visa, T-Visa, S-Visa).
- g. Respond to and properly initiate an investigation of any reports of hate crimes committed under the color of authority.
- h. Provide appropriate assistance, including activating the California Department of Justice [Hate Crime Rapid Response Protocol](#) if necessary. For additional information refer to the [California Department of Justice website](#).
- i. Verify reporting of any suspected multi-mission extremist crimes to the Professional Standards Division.
- j. Make a final determination as to whether the incident should be classified as a hate crime and forward to the Bureau Chief for approval.

331.5 TRAINING

All members of this Bureau will receive POST-approved training on hate crime recognition and investigation (Penal Code § 13519.6).

Training should include (Penal Code § 422.87):

- a. Recognition of bias motivators such as ranges of attitudes and perceptions toward a specific characteristic or group, including disability bias, gender bias, and religion bias.

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- b. Accurate reporting by investigators, including information on the general underreporting of hate crimes.
- c. Distribution of hate crime brochures.
- d. When a gun violence restraining order may be appropriate for prevention of hate crimes (Penal Code § 13519.6).

331.6 APPENDIX

See attachments:

[Hate Crime Checklist.pdf](#)

[Statutes and Legal Requirements.pdf](#)

[Supplemental Hate Crime Report OCDA.pdf](#)

[CA DOJ Hate Crime Brochure-ENGLISH.pdf](#)

[CA DOJ Hate Crime Brochure-Spanish.pdf](#)

Generative Artificial Intelligence Use

332.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for Bureau use of generative artificial intelligence (GenAI). This policy does not apply to artificial intelligence that is integrated into facial recognition applications, voice recognition applications, biometric access controls, or software that redacts documents or video or similar applications.

Additional guidelines for the use of Bureau information technology resources are found in the Information Technology Use Policy.

332.1.1 DEFINITIONS

Definitions related to this policy include:

Generative artificial intelligence (GenAI) - A type of artificial intelligence that is algorithmically trained on one or more large data sets and designed to generate new and unique data (e.g., text, pictures, video) in response to a prompt (generally questions, instructions, images, or video) input by the user.

332.2 POLICY

The use of GenAI systems carries unique benefits within a law enforcement agency, providing ways to increase operational efficiency, enhance Bureau procedures, and improve the overall effectiveness of the Orange County District Attorney's Bureau of Investigation.

However, the prompts input into GenAI systems can present risks to both individuals and law enforcement agencies by making accessible to the public, information such as Bureau tactics, investigative and training techniques, confidential information (e.g., confidential informants, protected information), active investigations, and security procedures. In addition, without safeguards in place, GenAI can produce unintended discriminatory or biased output as well as content that is inaccurate, misleading, or copyrighted.

It is the policy of the Bureau to develop, implement, and use GenAI ethically and responsibly in a way that minimizes potential risk and harm in accordance with the guidelines set forth below.

Any function carried out by a member of the Bureau using GenAI is subject to the same laws, rules, and policies as if carried out without the use of GenAI. The use of GenAI does not permit any law, rule, or policy to be bypassed or ignored.

332.3 USE OF GENERATIVE AI

The use of Bureau GenAI systems by Bureau members shall be limited to official work-related purposes, and members shall only access and use GenAI systems for which they have been authorized and received proper training.

Generative Artificial Intelligence Use

Members shall use AI-generated content as an informational tool and not as a substitution for human judgment or decision-making. Members should not represent AI-generated content as their own original work and shall comply with California Penal Code 13663.

A search warrant, supplemental report, photo lineup, investigative summary, or other document related to an investigation and subject to discovery in a criminal case shall be deemed a report. If a report is generated, fully or partially, using GenAI, the following shall occur (per Penal Code 13663):

1. Each page of the report or in-text body shall disclose the specific AI program used and prominently state: "This report was written either fully or in part using artificial intelligence."
2. The responsible investigator shall sign the final report (physically or electronically) verifying they reviewed the entire content and affirming the facts are true and correct.
3. The first draft generated by GenAI (before edits) shall be retained for as long as the final report is maintained in records.
4. Except for the final signed report, no AI-generated draft shall constitute an investigator's official statement.
5. The GenAI system shall maintain an audit trail (for as long as the final report is retained) that, at minimum, identifies:
 - a. the person who used the system to generate the report
 - b. the audio/video sources used (e.g., body-worn, dash cam, interview) in generating the draft or final product

332.3.1 PRIVACY CONSIDERATIONS

Information not otherwise available to the public, including data reasonably likely to compromise an investigation, reveal confidential law enforcement techniques, training, or procedures, or risk the safety of any individual if it were to become publicly accessible, should not be input into a GenAI system unless contractual safeguards are in place to prevent such information from becoming publicly accessible. Members should instead use generic unidentifiable inputs, such as "suspect" or "victim," and hypothetical scenarios whenever possible.

Protected information should only be input into GenAI systems that have been approved for such use and comply with applicable privacy laws and standards (see the Protected Information Policy).

332.4 PROHIBITED USE

Members shall not use GenAI systems to rationalize a law enforcement decision, or as the sole basis of research, interpretation, or analysis of the law or facts related to a law enforcement contact or investigation.

Members shall not create user accounts in their official capacity or input work-related data (including information learned solely in the scope of their employment) into publicly available GenAI systems unless the system has been approved by the Information Technology Director or the authorized designee for the intended use.

Generative Artificial Intelligence Use

332.5 TRAINING

All members authorized to use GenAI should receive appropriate initial training that is suitable for their role and responsibilities prior to their use of GenAI and receive periodic refresher training. Training should include but is not limited to the following:

- a. A review of this policy and California Penal Code 13663
- b. The need for human oversight of GenAI outputs
- c. Checking GenAI output for bias or protected information
- d. Ethical use of GenAI technology
- e. Data security and privacy concerns

Chapter 4 - Patrol Operations

Bias-Based Policing

400.1 PURPOSE AND SCOPE

This policy provides guidance to Bureau members that affirms the Orange County District Attorney Bureau of Investigation's commitment to policing that is fair and objective.

Nothing in this policy prohibits the use of specified characteristics in law enforcement activities designed to strengthen the Bureau's relationship with its diverse communities (e.g., cultural and ethnicity awareness training, youth programs, community group outreach, partnerships).

400.1.1 DEFINITIONS

Definitions related to this policy include:

Bias-based policing - An inappropriate reliance on actual or perceived characteristics such as race, ethnicity, national origin (including limited English proficiency), religion, sex, sexual orientation, gender identity or expression, economic status, age, cultural group, disability, or affiliation with any non-criminal group (protected characteristics) as the basis for providing differing law enforcement service or enforcement (Penal Code § 13519.4). This includes explicit and implicit biases (i.e., conscious and unconscious beliefs or attitudes towards certain groups).

400.2 POLICY

The Orange County District Attorney Bureau of Investigation is committed to providing law enforcement services to the community with due regard for the racial, cultural or other differences of those served. It is the policy of this Bureau to provide law enforcement services and to enforce the law equally, fairly, objectively and without discrimination toward any individual or group.

400.3 BIAS-BASED POLICING PROHIBITED

Bias-based policing is strictly prohibited.

However, nothing in this policy is intended to prohibit an investigator from considering protected characteristics in combination with credible, timely and distinct information connecting a person or people of a specific characteristic to a specific unlawful incident, or to specific unlawful incidents, specific criminal patterns or specific schemes.

400.3.1 CALIFORNIA RELIGIOUS FREEDOM ACT

Members shall not collect information from a person based on religious belief, practice, affiliation, national origin or ethnicity unless permitted under state or federal law (Government Code § 8310.3).

Members shall not assist federal government authorities (Government Code § 8310.3):

Bias-Based Policing

- a. In compiling personal information about a person's religious belief, practice, affiliation, national origin or ethnicity.
- b. By investigating, enforcing or assisting with the investigation or enforcement of any requirement that a person register with the federal government based on religious belief, practice, or affiliation, or national origin or ethnicity.

400.4 MEMBER RESPONSIBILITIES

Every member of this Bureau shall perform his/her duties in a fair and objective manner and is responsible for promptly reporting any suspected or known instances of bias-based policing to a supervisor. Members should, when reasonable to do so, intervene to prevent any biased-based actions by another member.

400.4.1 DISCLOSURE AND DOCUMENTATION OF TRAFFIC OR PEDESTRIAN STOP

An investigator conducting a traffic or pedestrian stop shall state the reason for the stop prior to questioning the individual related to a criminal investigation or traffic violation unless the investigator reasonably believes that withholding the reason for the stop is necessary to protect life or property from imminent threat, including but not limited to cases of terrorism or kidnapping (Vehicle Code § 2806.5).

Investigators shall document the reason for the stop on any citation or report (Vehicle Code § 2806.5).

400.5 TRAINING

Training on fair and objective policing and review of this policy shall be conducted as directed by the Professional Standards Division in accordance with California Police Officer Standards and Training (POST) mandates. The training should include:

- a. Explicit and implicit biases.
- b. Avoiding improper profiling.

400.5.1 ADDITIONAL STATE REQUIREMENTS

Training should be conducted as directed by the Professional Standards Division.

- a. All sworn members of this Bureau will be scheduled to attend POST-approved training on the subject of bias-based policing.
- b. Pending participation in such POST-approved training and at all times, all members of this Bureau are encouraged to familiarize themselves with and consider racial and cultural differences among members of this community.
- c. Each sworn member of this Bureau who received initial bias-based policing training will thereafter be required to complete an approved POST refresher course every five years, or sooner if deemed necessary, in order to keep current with changing racial, identity, and cultural trends (Penal Code § 13519.4(i)).

400.6 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

Bias-Based Policing

The Professional Standards Division shall ensure that all data required by the California Department of Justice (DOJ) regarding complaints of racial bias against investigators is collected and reported to the DOJ (Penal Code § 13012; Penal Code § 13020). Unless an exception applies under 11 CCR 999.227, an investigator conducting a stop of a person shall collect the data elements required by 11 CCR 999.226 for every person stopped and prepare a stop data report. When multiple investigators conduct a stop, the investigator with the highest level of engagement with the person shall collect the data elements and prepare the report (11 CCR 999.227).

If multiple agencies are involved in a stop and the Bureau of Investigation (BOI) is the primary agency, the BOI Investigator shall collect the data elements and prepare the stop data report (11 CCR 999.227).

Effective January 1, 2024, if the investigator works with the non-primary agency in a stop done in conjunction with an agency that is not subject to the reporting requirements of the chapter, it shall be documented, "yes" or "no" in the stop data report.

The stop data report should be completed by the end of the investigators shift or as soon as practicable (11 CCR 999.227).

Hazardous Material Response

401.1 PURPOSE AND SCOPE

Exposure to hazardous materials presents potential harm to Bureau members and the public. This policy outlines the responsibilities of members who respond to these events and the factors that should be considered while on-scene, including the reporting of exposures and supervisor responsibilities. To comply with California Code of Regulations, Title 8, CCR § 5194, the following is to be the policy of this Bureau.

401.1.1 DEFINITIONS

Definitions related to this policy include:

Hazardous material – A substance which, by its nature, containment, or reactivity, has the capability of inflicting harm during exposure; characterized as being toxic, corrosive, flammable, reactive, an irritant or strong sensitizer and thereby posing a threat to health when improperly managed.

401.2 HAZARDOUS MATERIAL RESPONSE

Members may encounter situations involving suspected hazardous materials, such as at the scene of a traffic accident, chemical spill, or fire. When members come into contact with a suspected hazardous material, certain steps should be taken to protect themselves and citizens.

The following steps should be considered at any scene involving suspected hazardous materials:

- a. Attempt to identify the type of hazardous substance (Identification can be determined by placard, driver's manifest, or statements from the person transporting).
- b. Notify the fire department and the local law enforcement agency.
- c. If necessary, obtain additional safety gear from county or local fire departments.
- d. Provide first-aid for injured parties if it can be done safely and without contamination.
- e. Begin evacuation of the immediate area and surrounding areas, depending on the substance. Voluntary evacuation should be considered; however, depending on the substance, mandatory evacuation may be necessary.
- f. Notify the local health authority (Orange County Health Authority 714-834-2178). Such notification is mandatory when a spilled or released item is a pesticide (Health and Safety Code § 105215).
- g. Notify the Department of Toxic Substances Control (714-484-5300). This is mandatory when an investigator comes in contact with, or is aware of, the presence of a suspected hazardous substance at a site where an illegal controlled substance is or was manufactured (Health and Safety Code §25354.5 and § 79355).

401.3 REPORTING EXPOSURE

Hazardous Material Response

Bureau members who believe that they have been exposed to a hazardous material shall immediately report the exposure to a supervisor.

Injury or illness caused or believed to be caused from exposure to hazardous materials shall be reported the same as any other on-duty injury or illness in addition to a crime report or incident report as applicable.

401.3.1 SUPERVISOR RESPONSIBILITY

When a supervisor has been informed that a member has been exposed to a hazardous material, the supervisor shall ensure that immediate medical treatment is obtained and appropriate action is taken to lessen the exposure. The supervisor must also complete and submit the appropriate [workers' compensation paperwork](#), located on the DA Intranet.

Crime and Disaster Scene Integrity

402.1 PURPOSE AND SCOPE

The protection and integrity of a crime scene is the utmost importance for the successful apprehension of criminals and successful prosecution. The integrity of a disaster scene is equally as critical for the protection of life and property and investigation by proper authorities.

402.2 POLICY

It is the policy of the Orange County District Attorney Bureau of Investigation to secure crime or disaster scenes so that evidence is preserved, and to identify and mitigate the dangers associated with a major crime or disaster scene for the safety of the community and those required to enter or work near the scene.

402.3 SCENE RESPONSIBILITY

The first investigator at the scene of a crime or major incident is generally responsible for the immediate safety of the public and preservation of the scene. Investigators shall also consider officer safety and the safety of those persons entering or exiting the area, including those rendering medical aid to any injured parties. Once an investigator has assumed or been assigned to maintain the integrity and security of the crime or disaster scene, the investigator shall maintain the crime or disaster scene until he/she is properly relieved by a supervisor or other designated person.

402.4 FIRST RESPONDER CONSIDERATIONS

The following list generally describes the first responder's function at a crime or disaster scene. This list is not intended to be all-inclusive, is not necessarily in order and may be altered according to the demands of each situation:

- a. Broadcast emergency information, including requests for additional assistance and resources.
- b. Provide for the general safety of those within the immediate area by mitigating, reducing or eliminating threats or dangers.
- c. Locate or identify suspects and determine whether dangerous suspects are still within the area.
- d. Provide first aid to injured parties if it can be done safely.
- e. Evacuate the location safely as required or appropriate.
- f. Secure the inner perimeter.
- g. Protect items of apparent evidentiary value.
- h. Secure an outer perimeter.
- i. Identify potential witnesses.
- j. Start a chronological log noting critical times and personnel allowed access.

402.5 SEARCHES

Crime and Disaster Scene Integrity

Investigators arriving at crime or disaster scenes are often faced with the immediate need to search for and render aid to victims, and to determine if suspects are present and continue to pose a threat. Once investigators are satisfied that no additional suspects are present and/or there are no injured persons to be treated, those exigent circumstances will likely no longer exist. Investigators should thereafter secure the scene and conduct no further search until additional or alternate authority for the search is obtained, such as consent or a search warrant.

402.5.1 CONSENT

Investigators should seek verbal consent to search or when possible, written consent, from authorized individuals. However, in the case of serious crimes or major investigations, it may be prudent to also obtain a search warrant. Consent as an additional authorization may be sought, even in cases where a search warrant has been granted.

402.6 EXECUTION OF HEALTH ORDERS

Any sworn member of this Bureau is authorized to enforce all orders of the local health officer that have been issued for the purpose of preventing the spread of any contagious, infectious or communicable disease (Health and Safety Code § 120160).

402.7 MEDIA ACCESS

Pursuant to Penal Code § 409.5, whenever a menace to the public health or safety is created by a calamity including a flood, storm, fire, earthquake, explosion, accident, or other disaster, investigators may close the area where the menace exists for the duration thereof by means of ropes, markers, or guards to any and all persons not authorized by the investigator to enter or remain within the enclosed area. However, per § 409.5(d), a duly authorized representative of any news service, newspaper, or radio or television station or network may enter the closed area. Authorized and bona fide members of the media shall be provided access to scenes where the menace exists.

1. The media representative shall produce valid press credentials which shall be prominently displayed at all times while in areas otherwise closed to the public.
2. Media representatives may be prevented from interfering with emergency operations and criminal investigations.
 - a. Media interviews with individuals who are in custody shall not be permitted without the approval of the District Attorney, or designee, and the expressed consent of the person in custody.
 - b. In situations where media access would reasonably appear to interfere with emergency operations and/or a criminal investigation, every reasonable effort should be made to provide media representatives with access to a command post at the nearest location which will not interfere with such activities. No member of this Bureau shall be subjected to media visits or interviews without the consent of the involved employee (Government Code § 3303(e)).

The scene of a tactical operation is the same as a crime scene, except that the news media shall be permitted within the outer perimeter of the scene, subject to any restrictions as set forth by the on-duty

Crime and Disaster Scene Integrity

supervisor or supervisor in charge. Bureau members shall not jeopardize a tactical operation in order to accommodate the news media, but every effort shall be made to keep them well informed of the progress of the operation.

Cite and Release Policy

403.1 PURPOSE AND SCOPE

This policy provides guidance on when to release adults who are arrested for a criminal misdemeanor offense on a written notice to appear (citation) and when to hold for court or bail.

403.2 POLICY

It is the policy of the Orange County District Attorney Bureau of Investigation to release all persons arrested on misdemeanor or other qualifying charges on a citation with certain exceptions (Penal Code § 853.6).

If there is a reason for non-release, the Bureau's mission to protect the community will be the primary consideration when determining whether to release any individual in lieu of holding for court or bail.

403.3 BUREAU PROCEDURE

It is understood that under normal working operations (Orange County District Attorney Bureau of Investigation is not a first responding agency), investigators are not engaged in activities involving a "cite and release" of individuals taken into custody. However, the following procedure will be followed to comply with this law.

Field citations may be obtained from the Professional Standards Division.

403.4 RELEASE BY CITATION

Except in cases where a reason for non-release as described below exists, adults arrested for a misdemeanor offense, including a private person's arrest, shall be released from custody on a citation (Penal Code § 853.6).

The citing investigator shall, at the time the defendant signs the notice to appear, call attention to the time and place for appearance and take any other steps they deem necessary to ensure that the defendant understands their written promise to appear.

403.4.1 FIELD CITATIONS

In most cases an adult arrested for a misdemeanor offense may be released in the field on a citation in lieu of physical arrest when booking and fingerprinting is not practicable or immediately required provided the individual can be satisfactorily identified, there is no outstanding arrest warrant for the individual and none of the below described disqualifying circumstances are present (Penal Code § 853.6; Penal Code § 1270.1). In such cases the arresting investigator should check the booking required box on the citation form to indicate that the person will be photographed and fingerprinted at a later time when ordered by the court.

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When a booking photo or fingerprints are needed for the furtherance of any investigation, the person should be released on citation after booking instead of on a field citation.

403.4.2 RELEASE AFTER BOOKING

In some cases it may not be feasible or desirable to release a person in the field. The person should instead be released on citation after booking at the jail. All bookings shall be approved by a supervising investigator.

403.5 NON-RELEASE

403.5.1 DISQUALIFYING OFFENSES

An adult arrested on any of the following disqualifying charges shall not be released on citation and shall be transported to the appropriate detention facility or held for court or bail after booking (Penal Code § 1270.1):

- a. Misdemeanor domestic battery (Penal Code § 243(e)(1))
- b. Felony domestic battery (Penal Code § 273.5)
- c. Serious or violent felonies (Penal Code § 1270.1(a)(1))
- d. Felony intimidation of witnesses and victims (Penal Code § 136.1)
- e. Violation of a protective order and the arrested person has made threats, used violence, or has gone to the protected person's workplace or residence (Penal Code § 273.6)
- f. Stalking (Penal Code § 646.9)
- g. Misdemeanor violations of a protective order relating to domestic violence if there is a reasonable likelihood the offense will continue or the safety of the individuals or property would be endangered (Penal Code § 853.6)

403.5.2 REASONS FOR NON-RELEASE

A person arrested for a misdemeanor shall be released on a citation unless there is a reason for non-release. A supervising investigator may authorize a release on citation regardless of whether a reason for non-release exists when it is determined to be in the best interest of the Bureau and does not present an unreasonable risk to the community (e.g., release of an intoxicated or ill person to a responsible adult).

Reasons for non-release include (Penal Code § 853.6(i)):

1. The person arrested is so intoxicated that they could be a danger to themselves or to others. Release may occur as soon as this condition no longer exists.
2. The person arrested requires medical examination or medical care or is otherwise unable to care for their own safety
 - a. The Orange County District Attorney Bureau of Investigation shall not release an arrestee from custody for the purpose of allowing that person to seek medical care at a hospital, and then immediately re-arrest the same individual upon discharge from the hospital, unless the

Cite and Release Policy

hospital determines this action will enable it to bill and collect from a third-party payment source (Penal Code § 4011.10(c)).

3. The person is arrested for one or more of the offenses listed in Vehicle Code § 40302, Vehicle Code § 40303, and Vehicle Code § 40305.
4. There are one or more outstanding arrest warrants for the person (see Misdemeanor Warrants).
5. The person could not provide satisfactory evidence of personal identification.
 - a. If a person released on citation does not have satisfactory identification in their possession, a right thumbprint or fingerprint should be obtained on the citation form.
6. The prosecution of the offense or offenses for which the person was arrested or the prosecution of any other offense or offenses would be jeopardized by the immediate release of the person arrested.
7. There is a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by the release of the person arrested.
8. The person arrested demands to be taken before a magistrate or has refused to sign the notice to appear.
9. There is reason to believe that the person would not appear at the time and place specified in the notice to appear. The basis for this determination shall be specifically documented. Reasons may include:
 - a. Previous failure to appear is on record
 - b. The person lacks ties to the area, such as a residence, job or family
 - c. Unusual circumstances lead the investigator responsible for the release of arrested persons to conclude that the suspect should be held for further investigation
10. A previous conviction, citation, or arrest for misdemeanor or felony retail theft from a store in the previous six months.
11. There is probably cause to believe that the person arrested is guilty of committing organized retail theft.

When a person is arrested on a misdemeanor offense and is not released by criminal citation, the reason for non-release shall be noted on the booking form. This form shall be submitted to a supervisor for approval and included with the case file.

403.6 MISDEMEANOR WARRANTS

An adult arrested on a misdemeanor warrant may be released, subject to supervisor approval, unless any of the following conditions exist (Penal Code § 827.1):

- a. The misdemeanor cited in the warrant involves violence.
- b. The misdemeanor cited in the warrant involves a firearm.
- c. The misdemeanor cited in the warrant involves resisting arrest.
- d. The misdemeanor cited in the warrant involves giving false information to a peace officer.

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- e. The person arrested is a danger to themselves or others due to intoxication or being under the influence of drugs or narcotics.
- f. The person requires medical examination or medical care or was otherwise unable to care for their own safety.
- g. The person has other ineligible charges pending against themselves.
- h. There is reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be immediately endangered by the release of the person.
- i. The person refuses to sign the notice to appear.
- j. The person cannot provide satisfactory evidence of personal identification.
- k. The warrant of arrest indicates that the person is not eligible to be released on a notice to appear.

Release under this section shall be done in accordance with the provisions of this policy.

403.7 JUVENILE CITATIONS

Completion of criminal citations for juveniles is generally not appropriate except for misdemeanor traffic violations of the Vehicle Code.

Foreign Diplomatic and Consular Representatives

404.1 PURPOSE AND SCOPE

This policy provides guidelines to ensure that members of the Orange County District Attorney Bureau of Investigation extend appropriate privileges and immunities to foreign diplomatic and consular representatives in accordance with international law.

404.2 POLICY

The Orange County District Attorney Bureau of Investigation respects international laws related to the special privileges and immunities afforded foreign diplomatic and consular representatives assigned to the United States.

All foreign diplomatic and consular representatives shall be treated with respect and courtesy, regardless of any privileges or immunities afforded them.

404.3 CLAIMS OF IMMUNITY

If a member comes into contact with a person where law enforcement action may be warranted and the person claims diplomatic or consular privileges and immunities, the member should, without delay:

- a. Notify a supervisor.
- b. Advise the person that his/her claim will be investigated and he/she may be released in accordance with the law upon confirmation of the person's status.
- c. Request the person's identification card, either issued by the U.S. Department of State (DOS), Office of the Chief of Protocol, or in the case of persons accredited to the United Nations, by the U. S. Mission to the United Nations. These are the only reliable documents for purposes of determining privileges and immunities.
- d. Contact the DOS Diplomatic Security Command Center at 571-345-3146 or toll free at 866-217-2089, or at another current telephone number and inform the center of the circumstances.
- e. Verify the immunity status with DOS and follow any instructions regarding further detention, arrest, prosecution and/or release, as indicated by the DOS representative. This may require immediate release, even if a crime has been committed.

Identity or immunity status should not be presumed from the type of license plates displayed on a vehicle. If there is a question as to the status or the legitimate possession of a Diplomat or Consul license plate, a query should be run via the National Law Enforcement Telecommunications System (NLETS), designating "US" as the state.

404.4 ENFORCEMENT

If the DOS is not immediately available for consultation regarding law enforcement action, members shall be aware of the following:

Foreign Diplomatic and Consular Representatives

1. Generally, all persons with diplomatic and consular privileges and immunities may be issued a citation or notice to appear. However, the person may not be compelled to sign the citation.
2. All persons, even those with a valid privilege or immunity, may be reasonably restrained in exigent circumstances for purposes of self-defense, public safety or the prevention of serious criminal acts.
3. An impaired foreign diplomatic or consular representative may be prevented from driving a vehicle, even if the person may not be arrested due to privileges and immunities.
 1. Investigations, including the request for field sobriety tests, chemical tests and any other tests regarding impaired driving may proceed but they shall not be compelled.
4. The following persons may not be detained or arrested, and any property or vehicle owned by these persons may not be searched or seized:
 1. Diplomatic-level staff of missions to international organizations and recognized family members
 2. Diplomatic agents and recognized family members
 3. Members of administrative and technical staff of a diplomatic mission and recognized family members
 4. Career consular officers, unless the person is the subject of a felony warrant
5. The following persons may generally be detained and arrested:
 1. International organization staff; however, some senior officers are entitled to the same treatment as diplomatic agents.
 2. Support staff of missions to international organizations
 3. Diplomatic service staff and consular employees; however, special bilateral agreements may exclude employees of certain foreign countries.
 4. Honorary consular officers
 5. Whenever an investigator arrests and incarcerates, or detains for investigation for over two hours, a person with diplomatic and consular privileges and immunities, the investigator shall promptly advise the person that he/she is entitled to have his/her government notified of the arrest or detention (Penal Code § 834c). If the individual wants his/her government notified, the investigator shall begin the notification process.

404.5 DOCUMENTATION

All contacts with persons who have claimed privileges and immunities afforded foreign diplomatic and consular representatives should be thoroughly documented and the related reports forwarded to DOS.

404.6 DIPLOMATIC IMMUNITY TABLE

Reference table on diplomatic immunity:

Category	Arrested or Detained	Enter Residence Subject to Ordinary Procedures	Issued Traffic Citation	Subpoenaed as Witness	Prosecuted	Recognized Family Members

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Foreign Diplomatic and Consular Representatives

Diplomatic Agent	No (note (b))	No	Yes	No	No	Same as sponsor (full immunity & inviolability)
Member of Admin and Tech Staff	No (note (b))	No	Yes	No	No	Same as sponsor (full immunity & inviolability)
Service Staff	Yes (note (a))	Yes	Yes	Yes	No for official acts. Yes otherwise (note (a))	No immunity or inviolability (note (a))
Career Consul Officer	Yes if for a felony and pursuant to a warrant (note (a))	Yes (note (d))	Yes	No for official acts Testimony may not be compelled in any case	No for official acts. Yes otherwise (note (a))	No immunity or inviolability
Honorable Consul Officer	Yes	Yes	Yes	No for official acts Yes otherwise.	No for official acts Yes otherwise	No immunity or inviolability
Consulate Employees	Yes (note (a))	Yes	Yes	No for official acts Yes otherwise.	No for official acts. Yes otherwise (note (a))	No immunity or inviolability (note (a))
Int'l Org Staff (note (b))	Yes (note (c))	Yes (note (c))	Yes	Yes (note (c))	No for official acts. Yes otherwise (note (c))	No immunity or inviolability

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Diplomatic-Level Staff of Missions to Int'l Org	No (note (b))	No	Yes	No	No	Same as sponsor (full immunity & inviolability)
Support Staff of Missions to Int'l Orgs	Yes	Yes	Yes	Yes	No for official acts Yes otherwise	No immunity or inviolability

Notes for diplomatic immunity table:

- This table presents general rules. The employees of certain foreign countries may enjoy higher levels of privileges and immunities on the basis of special bilateral agreements.
- Reasonable constraints, however, may be applied in emergency circumstances involving self-defense, public safety, or in the prevention of serious criminal acts.
- A small number of senior officers are entitled to be treated identically to diplomatic agents.
- Note that consul residences are sometimes located within the official consular premises. In such cases, only the official office space is protected from police entry.

Obtaining Air Support

405.1 PURPOSE AND SCOPE

The use of a police helicopter can be invaluable in certain situations. This policy specifies potential situations where the use of a helicopter may be requested and the responsibilities for making a request.

405.2 REQUEST FOR HELICOPTER ASSISTANCE

If a supervisor or investigator in charge of an incident determines that the use of a helicopter is necessary, a request to obtain helicopter assistance may be made.

405.2.1 REQUEST FOR ASSISTANCE FROM ANOTHER AGENCY

In other than exigent circumstances, the Division commander, or designee, will call the appropriate agency providing helicopter assistance. The commander will apprise that agency of the specific details of the incident prompting the request.

405.2.2 CIRCUMSTANCES UNDER WHICH AID MAY BE REQUESTED

Police helicopters may be requested under any of the following conditions:

- a. When the helicopter is activated under existing mutual aid agreements.
- b. Whenever the safety of law enforcement personnel is in jeopardy and the presence of the helicopter may reduce such hazard.
- c. When the use of the helicopter will aid in the capture of a suspected fleeing felon whose continued freedom represents an ongoing threat to the community.

Contacts and Temporary Detentions

406.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for temporarily detaining but not arresting persons in the field, conducting field interviews (FI) and pat-down searches, and the taking and disposition of photographs.

406.1.1 DEFINITIONS

Definitions related to this policy include:

Consensual encounter - When an investigator contacts an individual but does not create a detention through words, actions, or other means. In other words, a reasonable individual would believe that his/her contact with the investigator is voluntary.

Field interview - The brief detainment of an individual, whether on foot or in a vehicle, based on reasonable suspicion for the purpose of determining the individual's identity and resolving the investigator's suspicions.

Field photographs - Posed photographs taken of a person during a contact, temporary detention, or arrest in the field. Undercover surveillance photographs of an individual and recordings captured by the normal operation of a Mobile Audio Video (MAV) system, body-worn camera, or public safety camera when persons are not posed for the purpose of photographing are not considered field photographs.

Pat-down search - A type of search used by investigators in the field to check an individual for dangerous weapons. It involves a thorough patting-down of clothing to locate any weapons or dangerous items that could pose a danger to the investigator, the detainee, or others.

Reasonable suspicion - When, under the totality of the circumstances, an investigator has articulable facts that criminal activity may be afoot and a particular person is connected with that possible criminal activity.

Temporary detention - When an investigator intentionally, through words, actions, or physical force, causes an individual to reasonably believe he/she is required to restrict his/her movement without an actual arrest. Temporary detentions also occur when an investigator actually restrains a person's freedom of movement.

406.2 POLICY

The Orange County District Attorney respects the right of the public to be free from unreasonable searches or seizures. Due to an unlimited variety of situations confronting the investigator, the decision to

Contacts and Temporary Detentions

temporarily detain a person and complete a field interview (FI), pat-down search, or field photograph shall be left to the investigator based on the totality of the circumstances, officer safety considerations, and constitutional safeguards.

406.3 FIELD INTERVIEWS

Based on observance of suspicious circumstances or upon information from investigation, an investigator may initiate the stop of a person, and conduct an FI, when there is articulable, reasonable suspicion to do so. A person, however, shall not be detained longer than is reasonably necessary to resolve the investigator's suspicion.

Nothing in this policy is intended to discourage consensual contacts. Frequent casual contact with consenting individuals is encouraged by the Bureau to strengthen community involvement, community awareness, and problem identification.

406.3.1 INITIATING A FIELD INTERVIEW

When initiating the stop, the investigator should be able to point to specific facts which, when considered with the totality of the circumstances, reasonably warrant the stop. Such facts include but are not limited to an individual's:

- a. Appearance or demeanor suggesting that he/she is part of a criminal enterprise or is engaged in a criminal act
- b. Actions suggesting that he/she is engaged in a criminal activity
- c. Presence in an area at an inappropriate hour of the day or night
- d. Presence in a particular area is suspicious
- e. Carrying of suspicious objects or items
- f. Excessive clothes for the climate or clothes bulging in a manner that suggest he/she is carrying a dangerous weapon
- g. Location in proximate time and place to an alleged crime
- h. Physical description or clothing worn that matches a suspect in a recent crime
- i. Prior criminal record or involvement in criminal activity as known by the investigator

406.4 PAT-DOWN SEARCHES

A pat-down search of a detained subject may be conducted whenever an investigator reasonably believes that the person may possess an object that can be utilized as an offensive weapon or whenever the investigator has fear for his/her own safety or the safety of others. Circumstances that may establish justification for performing a pat-down search include, but are not limited to the following:

- a. The type of crime suspected, particularly in crimes of violence where the use or threat of deadly weapons is involved
- b. Where more than one suspect must be handled by a single investigator
- c. The hour of the day and the location where the stop takes place
- d. Prior knowledge of the suspect's use of force and/or propensity to carry deadly weapons

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- e. The actions and demeanor of the suspect
- f. Visual indications which suggest that the suspect is carrying a firearm or other weapon

Whenever possible, pat-down searches should be performed by investigators of the same gender.

406.5 FIELD PHOTOGRAPHS

Before photographing any field detainee, the investigator shall carefully consider, among other things, the factors listed below.

406.5.1 FIELD PHOTOGRAPHS TAKEN WITH CONSENT

Field photographs may be taken when the subject of the photograph knowingly and voluntarily gives consent. When taking a consensual photograph, the investigator should have the individual read and sign the appropriate form accompanying the photograph.

406.5.2 FIELD PHOTOGRAPHS TAKEN WITHOUT CONSENT

Field photographs may be taken without consent only if they are taken during a detention that is based upon reasonable suspicion of criminal activity, and the photograph serves a legitimate law enforcement purpose related to the detention. Mere knowledge or suspicion of gang membership or affiliation is not a sufficient justification for taking a photograph without consent. The investigator must be able to articulate facts that must give rise to a reasonable suspicion of criminal activity.

406.6 DISPOSITION OF PHOTOGRAPHS

All detainee photographs and related material must be adequately labeled and submitted into evidence, or when appropriate, directly given to the case investigator for further processing.

When the photograph is taken in association with a particular case, the investigator may use such photograph in a photo lineup. Thereafter, the individual photograph should be retained as a part of the case file. All other photographs will be kept with the property technician in a separate non-booking photograph file.

Response to Bomb Calls

407.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to assist members of the Orange County District Attorney Bureau of Investigation in their initial response to incidents involving explosives, explosive devices, explosion/bombing incidents or threats of such incidents. Under no circumstances should these guidelines be interpreted as compromising the safety of first responders or the public. When confronted with an incident involving explosives, safety should always be the primary consideration and immediate notification should be made to the local law enforcement agency.

407.2 POLICY

It is the policy of the Orange County District Attorney Bureau of Investigation to place a higher priority on the safety of persons and the public over damage or destruction to public or private property.

407.3 RECEIPT OF BOMB THREAT

Bureau members receiving a bomb threat should obtain as much information from the individual as reasonably possible, including the type, placement and alleged detonation time of the device.

If the bomb threat is received on a recorded line, reasonable steps should be taken to ensure that the recording is preserved in accordance with established Bureau evidence procedures.

The member receiving the bomb threat should ensure that their supervisor or the officer of the day (OD) is immediately advised and informed of the details. This will enable the supervisor or OD to ensure that the appropriate personnel (local law enforcement agency) are dispatched, and, as appropriate, the threatened location is given an advance warning.

407.4 GOVERNMENT FACILITY OR PROPERTY

A bomb threat targeting a government facility may require a different response based on the government agency.

407.4.1 ORANGE COUNTY DISTRICT ATTORNEY FACILITY

If the bomb threat is against the Orange County District Attorney facility, the commander or a designee will direct and assign investigators as required for coordinating a general building search or evacuation of the Bureau as he/she deems appropriate.

The following questions shall be asked if a call of a bomb threat is received at the Bureau of Investigation:

- a. When is the bomb going to explode?
- b. Where is the bomb right now?
- c. What kind of bomb is it?

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- d. What does it look like?
- e. Why did you place the bomb?

Attempt to keep the caller on the line as long as possible and obtain expanded answers to the above five basic questions.

During this time, record the following:

- a. Time of the call
- b. Exact words of the person as accurately as possible
- c. Age and sex
- d. Speech patterns and/or accents
- e. Background noises

407.4.2 OTHER COUNTY OR MUNICIPAL FACILITY OR PROPERTY

If the bomb threat is against a county or municipal facility within the jurisdiction of Orange County that is not the property of this Bureau, the appropriate agency will be promptly informed of the threat. Assistance to the other entity may be provided as the Bureau Chief or designee deems appropriate.

407.4.3 FEDERAL BUILDING OR PROPERTY

If the bomb threat is against a federal building or property, the Federal Protective Service should be immediately notified. The Federal Protective Service provides a uniformed law enforcement response for most facilities, which may include use of its Explosive Detector Dog teams.

If the bomb threat is against a federal government property where the Federal Protective Service is unable to provide a timely response, the appropriate facility's security or command staff should be notified.

Bomb threats against a military installation should be reported to the military police or other military security responsible for the installation.

407.5 PRIVATE FACILITY OR PROPERTY

When a member of this Bureau receives notification of a bomb threat at a location in the County of Orange, the member receiving the notification should obtain as much information as reasonably possible from the notifying individual, including:

- 1. The location of the facility.
- 2. The nature of the threat.
- 3. Whether the type and detonation time of the device is known.
- 4. Whether the facility is occupied and, if so, the number of occupants currently on-scene.
- 5. Whether the individual is requesting law enforcement assistance at the facility.
- 6. Whether there are any internal facility procedures regarding bomb threats in place, such as:
 - 1. No evacuation of personnel and no search for a device.
 - 2. Search for a device without evacuation of personnel.

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3. Evacuation of personnel without a search for a device.
4. Evacuation of personnel and a search for a device.

The member receiving the bomb threat information should ensure they will notify local law enforcement and their supervisor or OD immediately so that he/she can communicate with the person in charge of the threatened facility.

407.5.1 ASSISTANCE

The Bureau Chief or designee should be notified when Bureau assistance is requested. The Bureau Chief or designee will make the decision whether the Bureau will render assistance and at what level. Information and circumstances that indicate a reasonably apparent, imminent threat to the safety of either the facility or the public may require a more active approach, including Bureau control over the facility.

Should the Bureau Chief or designee determine that the Bureau will assist or control such an incident, he /she will determine:

1. The appropriate level of assistance.
2. The plan for assistance.
3. Whether to evacuate and/or search the facility.
4. Whether to involve facility staff in the search or evacuation of the building.
 1. The person in charge of the facility should be made aware of the possibility of damage to the facility as a result of a search.
 2. The safety of all participants is the paramount concern.
5. The need for additional resources, including:
 1. Notification and response, or standby notice, for fire and emergency medical services.

Even though a facility does not request the Bureau's assistance to clear the interior of a building, based upon the circumstances and known threat, investigators may be sent to the scene to evacuate other areas that could be affected by the type of threat, or for traffic and pedestrian control.

407.6 FOUND DEVICE

When handling an incident involving a suspected explosive device, the following guidelines, while not all inclusive, should be followed:

1. No known or suspected explosive item should be considered safe regardless of its size or apparent packaging.
2. The device should not be touched or moved except by the bomb squad or military explosive ordnance disposal team.
3. Personnel should not transmit on any equipment that is capable of producing radio frequency energy within 50 feet of the suspected device, unless failure to transmit compromises life safety. This includes the following:
 1. Two-way radios (Bureau-issued paksets excluded)
 2. Cell phones

Response to Bomb Calls

3. Other personal communication devices
4. The appropriate agency should be summoned for assistance.
5. The largest perimeter reasonably possible should initially be established around the device based upon available personnel and the anticipated danger zone.
6. A safe access route should be provided for support personnel and equipment.
7. Search the area for secondary devices as appropriate and based upon available resources.
8. Consider evacuation of buildings and personnel near the device or inside the danger zone and the safest exit route.

407.7 EXPLOSION/BOMBING INCIDENTS

When an explosion has occurred, there are multitudes of considerations which may confront the responding investigators. As in other catastrophic events, a rapid response may help to minimize injury to victims, minimize contamination of the scene by gathering crowds, or minimize any additional damage from fires or unstable structures.

407.7.1 CONSIDERATIONS

Investigators responding to explosions, whether accidental or a criminal act, should consider the following actions:

- a. Assess the scope of the incident, including the number of victims and extent of injuries.
- b. Request additional personnel and resources, as appropriate.
- c. Assist with first aid.
- d. Identify and take appropriate precautions to mitigate scene hazards, such as collapsed structures, bloodborne pathogens and hazardous materials.
- e. Assist with the safe evacuation of victims, if possible.
- f. Establish an inner perimeter to include entry points and evacuation routes. Search for additional or secondary devices.
- g. Preserve evidence.
- h. Establish an outer perimeter and evacuate if necessary.
- i. Identify witnesses.
- j. Be aware of any potential secondary attacks or explosions.

407.7.2 NOTIFICATIONS

When an explosion has occurred, the following people should be notified as appropriate:

- a. Fire department
- b. Orange County Sheriff's Department Bomb squad (714) 538-2694 (available 24 hours a day/7 days a week)
- c. Additional Bureau personnel
- d. Bureau Chief
- e. Supervisor
- f. Local law enforcement

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- g. Other law enforcement agencies, including local, state or federal agencies, such as the FBI and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)
- h. Other government agencies, as appropriate

407.7.3 CROWD CONTROL

Only authorized members with a legitimate need should be permitted access to the scene. Spectators and other unauthorized individuals should be restricted to a safe distance as is reasonably practicable given the available resources and personnel.

407.7.4 PRESERVATION OF EVIDENCE

As in any other crime scene, steps should immediately be taken to preserve the scene. The commander or designee should assign investigators to protect the crime scene area, which could extend over a long distance. Consideration should be given to the fact that evidence may be imbedded in nearby structures or hanging in trees and bushes.

Requests for Translations/Transcriptions

408.1 PURPOSE AND SCOPE

The Orange County County District Attorney Bureau of Investigation is continually called upon to have recorded interviews and documents translated/transcribed for prosecution and investigation.

Each agency is responsible for translation/transcription of audio/video recorded interviews and documents used for prosecution. The Bureau of Investigation is available to provide referrals for translators/transcribers.

408.2 IN HOUSE REQUESTS

It is the deputy district attorney's discretion on whether or not to have documents or audio/video transcribed/translated to assist in the prosecution of a case. Once decided, the deputy district attorney will notify their assigned investigator and the following will occur:

1. The investigator will review the audio/video, in its entirety, to determine if the clarity is good, what language(s) are used and who is present.
2. The investigator will submit a request via their unit's law office supervisor or senior.
3. The request will then be assigned to an information processing technician from the Investigations unit.
4. Once completed, a copy of the transcript will be uploaded into the Court Management System (CMS).
5. The investigator will provide a copy to the assigned deputy district attorney and save a copy into the case file.

408.2.1 SUMMARY OF AUDIO/VIDEO

Prior to submitting a request for transcription, a summary of the interview/recording needs to be provided to the deputy district attorney to verify whether or not the transcription is required. This is to eliminate the amount of unnecessary transcripts, which will allow for necessary requests to be completed in a timely manner. If the assigned investigator is unable to provide a summary in the language of the audio/video, they should request assistance from another investigator or an investigative assistant.

408.2.2 RUSH REQUESTS

If more than one request is made and they are needed as a "rush" request, the investigator should notify the law office supervisor or senior of the priority of the requests. This will ensure the requests are completed in a timely manner, according to importance based on prioritization. If the court date changes and the request is no longer needed in a "rush", notification should be made to the law office supervisor or senior so that other priority requests can be completed in a timely manner.

408.3 APPROVAL PROCESS FOR OUTSIDE CONTRACTS

Requests for Translations/Transcriptions

The law office supervisor of the involved unit will oversee the handling of any request for translation of recorded interviews or documents. The following approval process shall be followed:

- a. The investigator will review the audio/video, in its entirety, to determine if the clarity is good, what language(s) are used and who is present.
- b. The investigator will submit a request via their unit's law office supervisor or senior.
- c. The law office supervisor or senior will ascertain if the translation can be accomplished by the Bureau's in-house resources. If not, the law office supervisor or senior will forward to the assigned unit's head of court for approval.
- d. Once approval is granted by the head of court, the law office supervisor or senior will forward said request to the law office supervisor of Investigations.
- e. The law office supervisor of Investigations will contact the translator/transcriber and verify the rate to be charged for the translation/transcription (e.g., per page, by the hour, etc.). This information, once obtained, will be forwarded to the deputy district attorney, investigator and law office supervisor or senior law office supervisor of the involved unit.
- f. The information obtained in regard to rates will be forwarded to the deputy district attorney to ascertain if the transcription/translation is in fact still required. If so, the deputy district attorney will notify their head of court for final approval.
- g. If the request is approved, it will be sent out for completion by the law office supervisor of Investigations. The approval must come from the head of court or designee.
- h. Once the transcription is completed, the law office supervisor of Investigations will upload a copy into CMS and make proper notification to the deputy district attorney, investigator and law officer supervisor or senior law office supervisor.
- i. The investigator will provide a copy to the assigned deputy district attorney and save a copy into the case file.

Public Recording of Law Enforcement Activity

409.1 PURPOSE AND SCOPE

This policy provides guidelines for handling situations in which members of the public photograph or audio/video record law enforcement actions and other public activities that involve members of this Bureau. In addition, this policy provides guidelines for situations where the recordings may be evidence.

409.2 POLICY

The Orange County District Attorney Bureau of Investigation recognizes the right of persons to lawfully record members of this Bureau who are performing their official duties. Members of this Bureau will not prohibit or intentionally interfere with such lawful recordings. Any recordings that are deemed to be evidence of a crime or relevant to an investigation will only be collected or seized lawfully.

Investigators should exercise restraint for offenses such as interference, failure to comply or disorderly conduct as a means of preventing someone from exercising the right to record members performing their official duties.

409.3 RECORDING LAW ENFORCEMENT ACTIVITY

Members of the public who wish to record law enforcement activities are limited only in certain aspects.

1. Recordings may be made from any public place or any private property where the individual has the legal right to be present (Penal Code § 69; Penal Code § 148).
2. Beyond the act of photographing or recording, individuals may not interfere with the law enforcement activity. Examples of interference include, but are not limited to:
 1. Tampering with a witness or suspect.
 2. Inciting others to violate the law.
 3. Being so close to the activity as to present a clear safety hazard to the investigators.
 4. Being so close to the activity as to interfere with an investigator's effective communication with a suspect or witness.
3. The individual may not present an undue safety risk to the investigators, him/herself or others.

409.4 INVESTIGATOR RESPONSE

Investigators should promptly request that a supervisor respond to the scene whenever it appears that anyone recording activities may be interfering with an investigation or it is believed that the recording may be evidence. If practicable, and no officer safety issues are present, the investigator should wait for the supervisor to arrive before taking enforcement action or seizing any cameras or recording media.

Whenever practicable, investigators or supervisors should give clear and concise warnings to individuals who are conducting themselves in a manner that would cause their recording or behavior to be unlawful.

Public Recording of Law Enforcement Activity

If an arrest or other significant enforcement activity is taken as the result of a recording that interferes with law enforcement activity, investigators shall document in a report the nature and extent of the interference or other unlawful behavior and the warnings that were issued.

409.5 SUPERVISOR RESPONSIBILITIES

A supervisor should respond to the scene when requested or any time the circumstances indicate a likelihood of interference or other unlawful behavior.

The supervisor should review the situation with the investigator and:

- a. Request any additional assistance as needed to ensure a safe environment.
- b. Take a lead role in communicating with individuals who are observing or recording regarding any appropriate limitations on their location or behavior. When practical, the encounter should be recorded. Refer to Portable Audio/Video Recorders § 413.7 for information on reviewing recordings.
- c. When practicable, allow reasonable time for individuals to respond to requests for a change of location or behavior.
- d. Ensure that any enforcement, seizure or other actions are consistent with this policy and constitutional and state law.
- e. Explain alternatives for individuals who wish to express concern about the conduct of Bureau members, such as how and where to file a complaint.

409.6 SEIZING RECORDINGS AS EVIDENCE

Investigators should not seize recording devices or media unless (42 USC § 2000aa):

1. There is probable cause to believe the person recording has committed or is committing a crime to which the recording relates, and the recording is reasonably necessary for prosecution of the person.
 1. Absent exigency or consent, a warrant should be sought before seizing or viewing such recordings. Reasonable steps may be taken to prevent erasure of the recording.
2. There is reason to believe that the immediate seizure of such recordings is necessary to prevent serious bodily injury or death of any person.
3. The person consents.
 1. To ensure that the consent is voluntary and if possible, in writing, the request should not be made in a threatening or coercive manner.
 2. If the original recording is provided, a copy of the recording should be provided to the recording party, if practicable. The recording party should be permitted to be present while the copy is being made, if feasible. Another way to obtain the evidence is to transmit a copy of the recording from a device to a Bureau-owned device.

Recording devices and media that are seized will be submitted within the guidelines of the Property and Evidence Policy § 801.

Medical Aid and Response

410.1 PURPOSE AND SCOPE

This policy recognizes that members often encounter persons in need of medical aid and establishes a law enforcement response to such situations.

410.2 POLICY

It is the policy of the Orange County District Attorney Bureau of Investigation that all investigators and other designated members be trained to provide emergency medical aid and to facilitate an emergency medical response.

410.3 FIRST RESPONDING MEMBER RESPONSIBILITIES

Whenever practicable, members should take appropriate steps to provide initial medical aid (e.g., first aid, CPR and use of an automated external defibrillator (AED)) in accordance with their training and current certification levels. This should be done for those in need of immediate care and only when the member can safely do so.

Prior to initiating medical aid, the member should contact Orange County Probation dispatch and request response by emergency medical services (EMS) as the member deems appropriate.

Members should follow universal precautions when providing medical aid, such as wearing gloves and avoiding contact with bodily fluids, consistent with the Occupational Disease and Work-Related Injuries Policy § 1017. Members should use a barrier or bag device to perform rescue breathing.

When requesting EMS, the member should provide dispatch with information for relay to EMS personnel in order to enable an appropriate response, including:

- a. The location where EMS is needed
- b. The nature of the incident
- c. Any known scene hazards
- d. Information on the person in need of EMS, such as:
 1. Signs and symptoms as observed by the member
 2. Changes in apparent condition
 3. Number of patients, sex and age, if known
 4. Whether the person is conscious, breathing and alert, or is believed to have consumed drugs or alcohol
 5. Whether the person is showing signs or symptoms of excited delirium or other agitated chaotic behavior

Members should stabilize the scene whenever practicable while awaiting the arrival of EMS.

Medical Aid and Response

Members should not direct EMS personnel whether to transport the person for treatment.

410.4 TRANSPORTING ILL AND INJURED PERSONS

Except in extraordinary cases where alternatives are not reasonably available, members should not transport persons who are unconscious, who have serious injuries or who may be seriously ill. EMS personnel should be called to handle patient transportation.

For guidelines regarding transporting ill or injured people who are in custody, see the Transporting Persons in Custody Policy.

Members should not provide emergency escort for medical transport or civilian vehicles.

410.4.1 SICK OR INJURED ARRESTEE

If an arrestee appears ill or injured, or claims illness or injury, the arrestee should be medically cleared prior to booking. If the investigator has reason to believe the arrestee is feigning injury or illness, the investigator should contact a supervisor, who will determine whether medical clearance will be obtained prior to booking.

If the jail or detention facility refuses to accept custody of an arrestee based on medical screening, the investigator should note the name of the facility person refusing to accept custody and the reason for refusal, and should notify a supervisor to determine the appropriate action.

Arrestees who appear to have a serious medical issue should be transported by ambulance. Investigators should not transport an arrestee to a hospital without a supervisor's approval.

410.5 MEDICAL ATTENTION RELATED TO USE OF FORCE

Specific guidelines for medical attention for injuries sustained from a use of force may be found in the Use of Force Policy § 300, Handcuff and Restraints Policy § 319, Control Devices and Techniques Policy § 304, and Conducted Electrical Weapon Policy § 302.

410.6 AUTOMATED EXTERNAL DEFIBRILLATOR (AED) USE

A member may use an AED only after receiving appropriate training from an approved public safety first aid and CPR course (22 CCR 100026.01; 22 CCR 100027.01; 22 CCR 100027.02).

410.6.1 AED USER RESPONSIBILITY

Any AED that is not functioning properly will be taken out of service and given to the OCDA Facilities Manager, who is responsible for ensuring appropriate maintenance.

Following use of an AED, the device shall be cleaned and/or decontaminated as required. The electrodes and/or pads will be replaced as recommended by the AED manufacturer.

Medical Aid and Response

Any member who uses an AED should contact dispatch as soon as possible and request response by EMS.

410.6.2 AED REPORTING

Any member using an AED will complete an incident report detailing its use.

410.6.3 AED TRAINING AND MAINTENANCE

The Training Coordinator should ensure appropriate training and refresher training is provided to members authorized to use an AED. A list of authorized members and training records shall be made available for inspection by the local EMS agency (LEMSA) or EMS authority upon request (22 CCR 100027.05; 22 CCR 100027.06; 22 CCR 100028.07).

The OCDA Facilities Manager is responsible for ensuring AED devices are appropriately maintained and will retain records of all maintenance in accordance with the established records retention schedule (22 CCR 100027.05).

410.7 ADMINISTRATION OF OPIOID OVERDOSE MEDICATION

Trained members may administer opioid overdose medication (Civil Code § 1714.22; Business and Professions Code § 4119.9).

410.7.1 OPIOID OVERDOSE MEDICATION USER RESPONSIBILITIES

Members who are qualified to administer opioid overdose medication, such as naloxone, should handle, store and administer the medication consistent with their training. Members should check the medication and associated administration equipment at the beginning of their shift to ensure they are serviceable and not expired. Any expired medication or unserviceable administration equipment should be removed from service and given to the Professional Standards Unit.

Any member who administers an opioid overdose medication should contact Control 1 as soon as possible and request response by EMS.

410.7.2 OPIOID OVERDOSE MEDICATION REPORTING

Any member administering opioid overdose medication should detail its use in an appropriate report.

The Training Coordinator will ensure that the Division Commander is provided enough information to meet applicable state reporting requirements.

410.7.3 OPIOID OVERDOSE MEDICATION TRAINING

The Training Coordinator should ensure training is provided to members authorized to administer opioid overdose medication. Training should be coordinated with the local health department and comply with the requirements in 22 CCR 100027.03 and any applicable POST standards (Civil Code § 1714.22).

Medical Aid and Response

410.7.4 DESTRUCTION OF OPIOID OVERDOSE MEDICATION

The Professional Standards Division supervising investigator shall ensure the destruction of any expired opioid overdose medication (Business and Professions Code § 4119.9).

410.7.5 OPIOID OVERDOSE MEDICATION RECORD MANAGEMENT

Records regarding acquisition and disposition of opioid overdose medications shall be maintained and retained in accordance with the established records retention schedule and at a minimum of three years from the date the record was created (Business and Professions Code § 4119.9).

410.8 ADMINISTRATION OF EPINEPHRINE AUTO-INJECTORS

The Bureau does not authorize members to administer epinephrine auto-injectors. As provided in mandatory CPR/First Aid training, every two years, members may only assist in the administration of an epinephrine auto-injector.

410.9 SICK OR INJURED ARRESTEE

If an arrestee appears ill or injured, or claims illness or injury, the arrestee should be medically cleared prior to booking. If the investigator has reason to believe the arrestee is feigning injury or illness, the investigator should contact a supervisor, who will determine whether medical clearance will be obtained prior to booking.

If the jail or detention facility refuses to accept custody of an arrestee based on medical screening, the investigator should note the name of the facility person refusing to accept custody and the reason for refusal, and should notify a supervisor to determine the appropriate action.

Arrestees who appear to have a serious medical issue should be transported by ambulance to an appropriate medical facility. Investigators shall not transport an arrestee to a hospital without a supervisor's approval.

Nothing in this section should delay an investigator from requesting EMS when an arrestee reasonably appears to be exhibiting symptoms that appear to be life threatening, including breathing problems or an altered level of consciousness, or is claiming an illness or injury that reasonably warrants an EMS response in accordance with the investigator's training.

410.9.1 HOSPITAL SECURITY AND CONTROL

Investigators who transport persons in custody to medical facilities for treatment should provide security and control during examination and treatment consistent with the following:

1. Monitor the person in custody (e.g., guarding against escape, suicide, and assault of others)
2. Removal of restraints if necessary and appropriate (see the Handcuff and Restraints Policy)
3. Continue security and control if the person in custody is admitted to the hospital. This should include transferring custody of the person to an appropriate agency.

Medical Aid and Response

410.10 FIRST-AID TRAINING

The Training Coordinator should ensure investigators receive initial first aid training within one year of employment and refresher training every two years thereafter (22 CCR 100026.03; 22 CCR 100027.06).

Immigration Violations

411.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines to members of the Orange County District Attorney Bureau of Investigation relating to immigration and interacting with federal immigration officials.

411.1.1 DEFINITIONS

The following definitions apply to this policy (Government Code § 7284.4):

Criminal immigration violation - Any federal criminal immigration violation that penalizes a person's presence in, entry, or reentry to, or employment in, the United States. This does not include any offense where a judicial warrant already has been issued.

Immigration enforcement - Any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, including any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law that penalizes a person's presence in, entry or reentry to, or employment in the United States.

Judicial warrant - An arrest warrant for a violation of federal criminal immigration law and issued by a federal judge or a federal magistrate judge.

411.2 POLICY

It is the policy of the Orange County District Attorney Bureau of Investigation that all members make personal and professional commitments to equal enforcement of the law and equal service to the public. Confidence in this commitment will increase the effectiveness of this Bureau in protecting and serving the entire community and recognizing the dignity of all persons, regardless of their national origin or immigration status.

411.3 VICTIMS AND WITNESSES

To encourage crime reporting and cooperation in the investigation of criminal activity, all individuals, regardless of their immigration status, must feel secure that contacting or being addressed by members of law enforcement will not automatically lead to immigration inquiry and/or deportation. While it may be necessary to determine the identity of a victim or witness, members shall treat all individuals equally and without regard to race, ethnicity, or national origin in any way that would violate the United States or California constitutions.

411.4 IMMIGRATION INQUIRIES PROHIBITED

Investigators shall not inquire into an individual's immigration status for immigration enforcement purposes (Government Code § 7284.6).

Immigration Violations

411.4.1 CALIFORNIA LAW ENFORCEMENT TELECOMMUNICATIONS SYSTEM (CLETS)

Members shall not use information transmitted through CLETS for immigration enforcement purposes except for criminal history information and only when consistent with the California Values Act (Government Code § 15160).

Members shall not use the system to investigate immigration violations of 8 USC § 1325 (improper entry) if that violation is the only criminal history in an individual's record (Government Code § 15160).

411.4.2 CALIFORNIA DEPARTMENT OF MOTOR VEHICLES

Members shall not obtain, access, use, or otherwise disclose noncriminal history information maintained by the DMV for immigration enforcement (Vehicle Code § 1808.48).

411.5 DETENTIONS AND ARRESTS

An investigator shall not detain any individual, for any length of time, for a civil violation of federal immigration laws or a related civil warrant (Government Code § 7284.6).

An investigator who has a reasonable suspicion that an individual already lawfully contacted or detained has committed a criminal violation of 8 USC § 1326(a) (unlawful reentry) that may be subject to an enhancement due to a previous conviction of an aggravated felony under 8 USC § 1326(b)(2), may detain the person for a reasonable period of time to contact federal immigration officials to verify whether the United States Attorney General has granted the individual permission for reentry and whether the violation is subject to enhancement (Government Code § 7284.6). No individual who is otherwise ready to be released should continue to be detained only because questions about the individual's status are unresolved.

If the investigator has facts that establish probable cause to believe that a person already lawfully detained has violated 8 USC § 1326(a) and the penalty may be subject to enhancement due to prior conviction for specified aggravated felonies, he/she may arrest the individual for that offense (Government Code § 7284.6).

An investigator shall not detain any individual, for any length of time, for any other criminal immigration violation of federal immigration laws (Government Code § 7284.6).

An investigator should notify a supervisor as soon as practicable whenever an individual is arrested for violation of 8 USC § 1326(a).

411.5.1 SUPERVISOR RESPONSIBILITIES

When notified that Investigator has arrested an individual for violation of 8 USC § 1326(a) or under the authority of a judicial warrant, the supervisor should determine whether it is appropriate to:

- a. Transfer the person to federal authorities.
- b. Transfer the person to jail.

Immigration Violations

411.6 FEDERAL REQUESTS FOR ASSISTANCE

Absent an urgent issue of officer safety or other emergency circumstances, requests by federal immigration officials for assistance from this Bureau should be directed to a supervisor. The supervisor is responsible for determining whether the requested assistance would be permitted under the California Values Act (Government Code § 7284.2 et seq.).

411.7 INFORMATION SHARING

No member of this Bureau will prohibit, or in any way restrict, any other member from doing any of the following regarding the citizenship or immigration status, lawful or unlawful, of any individual (8 USC § 1373; Government Code § 7284.6):

- a. Sending information to, or requesting or receiving such information from federal immigration officials.
- b. Maintaining such information in Bureau records.
- c. Exchanging such information with any other federal, state, or local government entity.

Nothing in this policy restricts sharing information that is permissible under the California Values Act.

411.7.1 IMMIGRATION DETAINERS

No individual should be held based solely on a federal immigration detainer under 8 CFR 287.7 (Government Code § 7284.6).

Notification to a federal authority may be made prior to release of an individual who is the subject of a notification request only if the individual meets one of the following conditions (Government Code § 7282.5; Government Code § 7284.6):

- a. The individual has been arrested and had a judicial probable cause determination for a serious or violent felony identified in Penal Code § 667.5(c) or Penal Code § 1192.7(c).
- b. The individual has been arrested and had a judicial probable cause determination for a felony punishable by time in a state prison.
- c. The individual has been convicted of an offense as identified in Government Code § 7282.5(a).
- d. The individual is a current registrant on the California Sex and Arson Registry.
- e. The individual is identified by the U.S. Department of Homeland Security's Immigration and Customs Enforcement as the subject of an outstanding federal felony arrest warrant.

411.7.2 NOTICE TO INDIVIDUALS

Individuals in custody shall be given a copy of documentation received from U.S. Immigration and Customs Enforcement (ICE) regarding a hold, notification or transfer request along with information as to whether the Orange County District Attorney Bureau of Investigation intends to comply with the request (Government Code § 7283.1).

Immigration Violations

If the Orange County District Attorney Bureau of Investigation provides ICE with notification that an individual is being, or will be, released on a certain date, the same notification shall be provided in writing to the individual and to his/her attorney or to one additional person who the individual may designate (Government Code § 7283.1).

411.7.3 ICE INTERVIEWS

Before any interview regarding civil immigration violations takes place between ICE personnel and an individual in custody, the Orange County District Attorney Bureau of Investigation shall provide the individual with a written consent form that explains the purpose of the interview, that the interview is voluntary and that he/she may decline to be interviewed or may choose to be interviewed only with his/her attorney present. The consent form must be available in the languages specified in Government Code § 7283.1.

411.7.4 TRANSFERS TO IMMIGRATION AUTHORITIES

Members shall not transfer an individual to immigration authorities unless one of the following circumstances exist (Government Code § 7282.5; Government Code § 7284.6):

- a. Transfer is authorized by a judicial warrant or judicial probable cause determination.
- b. The individual has been convicted of an offense as identified in Government Code § 7282.5(a).
- c. The individual is a current registrant on the California Sex and Arson Registry.
- d. The individual is identified by the U.S. Department of Homeland Security's Immigration and Customs Enforcement as the subject of an outstanding federal felony arrest warrant.

Criminal Organizations

412.1 PURPOSE AND SCOPE

The purpose of this policy is to ensure that the Orange County District Attorney Bureau of Investigation appropriately utilizes Criminal Intelligence Systems (CIS) and temporary information files to support investigations of criminal organizations and enterprises.

This policy does not apply to the database utilized by the Organized Crime Unit.

412.1.1 DEFINITIONS

Definitions related to this policy include:

Criminal Intelligence System (CIS) - Any record system that receives, stores, exchanges or disseminates information that has been evaluated and determined to be relevant to the identification of a criminal organization or enterprise, its members or affiliates. This does not include temporary information files.

412.2 POLICY

The Orange County District Attorney Bureau of Investigation recognizes that certain criminal activities, including but not limited to gang crimes and drug trafficking, often involve some degree of regular coordination and may involve a large number of participants over a broad geographical area.

It is the policy of this Bureau to collect and share relevant information while respecting the privacy and legal rights of the public.

412.3 CRIMINAL INTELLIGENCE SYSTEMS

No Bureau member may create, submit to or obtain information from a CIS unless the Bureau Chief has approved the system for Bureau use.

Any CIS approved for Bureau use should meet or exceed the standards of 28 CFR 23.20.

A designated supervisor will be responsible for maintaining each CIS that has been approved for Bureau use. The supervisor or the authorized designee should ensure the following:

- a. Members using any such system are appropriately selected and trained.
- b. Use of every CIS is appropriately reviewed and audited.
- c. Any system security issues are reasonably addressed.
- d. Members must demonstrate a need to know and a right to know.

412.3.1 SYSTEM ENTRIES

Criminal Organizations

It is the designated supervisor's responsibility to approve the entry of any information from a report, field interview (FI), photo or other relevant document into an authorized CIS. If entries are made based upon information that is not on file with this Bureau, such as open or public source documents or documents that are on file at another agency, the designated supervisor should ensure copies of those documents are retained. Any supporting documentation for an entry shall be retained in accordance with the established records retention schedule and for at least as long as the entry is maintained in the system.

412.3.2 GANG DATABASES

The Bureau Chief may approve participation by the gang unit in a shared criminal gang intelligence database, such as CALGANG®. Members must obtain the requisite training before accessing any such database.

It is the gang unit supervisor's responsibility to determine whether any report or FI contains information that would qualify for entry into the database. Prior to designating any person as a suspected gang member, associate or affiliate in a shared gang database; or submitting a document to the Attorney General's office for the purpose of designating a person in a shared gang database; or otherwise identifying the person in a shared gang database, the gang unit supervisor shall provide written notice to the person and, if the person is under the age of 18, to his/her parent or guardian of the designation and the basis for the designation, unless providing that notification would compromise an active criminal investigation or compromise the health or safety of a minor. Notice shall also describe the process to contest the designation (Penal Code § 186.34).

The person, an attorney working on his/her behalf or his/her parent or guardian (if the person is under 18 years of age) may request, in writing, information as to whether the person is designated as a suspected gang member, associate or affiliate in a shared gang database accessible by the Bureau, the basis for that designation and the name of the agency that made the designation. The Bureau shall respond to a valid request in writing within 30 days, and shall provide the information requested unless doing so would compromise an active investigation or compromise the health and safety of the person if he/she is under 18 years of age (Penal Code § 186.34).

The person, or his/her parent or guardian if the person is under 18 years of age, may contest the designation by submitting written documentation which shall be reviewed by the gang unit supervisor. If it is determined that the person is not a suspected gang member, associate or affiliate, the person shall be removed from the database. The person and the parent or guardian shall be provided written verification of the Bureau's decision within 30 days of receipt of the written documentation contesting the designation and shall include the reason for a denial when applicable (Penal Code § 186.34).

It is the responsibility of the Gang unit supervisor to retain reports and FIs in compliance with the database rules and any applicable end user agreement.

Records contained in a shared gang database shall not be disclosed for employment or military screening purposes, and shall not be disclosed for the purpose of enforcing federal immigration law unless required by state or federal statute or regulation (Penal Code § 186.36).

Criminal Organizations

412.4 TEMPORARY INFORMATION FILE

No member may create or keep files on individuals that are separate from the approved criminal intelligence system. However, members may maintain temporary information that is necessary to actively investigate whether a person or group qualifies for entry into the Bureau-approved criminal intelligence system only as provided in this section. Once information qualifies for inclusion, it should be submitted to the supervisor responsible for consideration of criminal intelligence system entries.

412.4.1 FILE REVIEW AND PURGING

The contents of a temporary information file shall not be retained longer than one year. At the end of one year, the contents must be purged.

The Gang Unit supervisor shall periodically review the temporary information files to verify that the contents meet the criteria for retention. Validation and purging of files is the responsibility of the Gang Unit supervisor.

412.5 CRIMINAL STREET GANGS

The Gang Unit supervisor should ensure that there are an appropriate number of Bureau members who can:

- a. Coordinate with other agencies in the region regarding criminal street gang-related crimes and information.
- b. Train other members to identify gang indicia and investigate criminal street gang-related crimes.

Audio/Video Recorders

413.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of audio/video recording devices by members of this Bureau while in the performance of their duties. Audio/video recording devices include all recording systems whether worn on the body, hand held or integrated into portable equipment.

This policy does not apply to lawful surreptitious audio/video recording, interception of communications for authorized investigative purposes or to mobile audio/video recordings.

For purposes of this policy, a body-worn camera is a camera designed to be worn on the body to record audio and video. This type of device is not issued, authorized nor in use by the Bureau.

413.2 POLICY

The Orange County District Attorney Bureau of Investigation may provide members with access to recorders, either audio or video or both, for use during the performance of their duties. The use of recorders is intended to enhance the mission of the Bureau by accurately capturing contacts between members of the Bureau and the public.

413.3 MEMBER RESPONSIBILITIES

Prior to conducting an investigation, each member will be responsible for making sure that he/she is equipped with a portable recorder issued by the Bureau, and that the recorder is in good working order. If the recorder is not in good working order or the member becomes aware of a malfunction at any time, the member shall promptly notify their supervisor and obtain a functioning device as soon as reasonably practicable.

Members should document the existence of a recording in any report or other official record of the contact, including any instance where the recorder malfunctioned or the member deactivated the recording. Members should include the reason for deactivation.

413.3.1 PROHIBITED USE OF AUDIO RECORDER

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule.

413.4 RECORDING PROCEDURES

413.4.1 THE RECORDER

- a. Choose a recorder and if non-issued, document the make, model and serial number.
- b. Whenever possible, test all of the functions of the recorder. When the investigator has decided that the recorder is operative, then he/she may proceed with the recording.

Audio/Video Recorders

- c. Verbally record members present, OCDA identification numbers, date and time the recording has commenced, when possible. If this is a surveillance recording, notate on the logs or surveillance report the time the recording commenced.
- d. Do not stop the recording process prior to the end of the interview unless it is verbally indicated on the recording that the investigator has either stopped or paused the recording process. Indicate the time the recorder was stopped and the time restarted, if possible. If this is a surveillance recording the investigator should not stop the recording at all. If the recording is stopped or paused, it should be noted on the logs the time the recording process stopped and the time resumed.

413.5 MEMBER PRIVACY EXPECTATION

All recordings made and stored by members acting in their official capacity shall remain the property of the Bureau regardless of whether those recordings were made with Bureau-issued or personally owned recorders. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

Members are prohibited from wearing their own personal body-worn camera as described in § 413.1.

413.6 ACTIVATION OF THE AUDIO RECORDER

As a general rule, a member shall record all interviews and any portion of a contact which they reasonably believe constitutes evidence or exculpatory information in a case or is potentially useful to the defense. If there is a circumstance that prevents the recording of an interview (i.e. safety reason, recording device malfunction, etc.) the reason for not recording the interview should be clearly documented in the report. However, consensual encounters, general contacts, initial contacts with the public or interviewees are not required to be recorded or documented; although investigators should use discretion if there is an investigatory or anticipated exculpatory need.

The investigator shall record the related case number and book the recording into evidence or download the file in accordance with current procedure for storing digital files.

1. The employee shall further note in any related report that the recording has been placed into evidence.
2. Recordings placed into evidence shall be retained through the final disposition of the related criminal case.
3. Any time a member reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., a hostile contact), the member should promptly notify a supervisor of the existence of the recording.

At no time should a member jeopardize his/her safety in order to activate a recorder.

Pursuant to Government Code § 3303(g), when any investigator is under investigation, the complete interrogation of the investigator shall be recorded and the investigator shall have access to that recording. Any interviews of witnesses to that investigation shall also be recorded.

Audio/Video Recorders

413.6.1 CESSATION OF RECORDING

Once activated, the recorder should remain on continuously until the member reasonably believes that his /her direct participation in the incident is complete or the situation no longer fits the criteria for activation. Recording may be stopped during significant periods of inactivity such as report writing or other breaks from direct participation in the incident.

Members shall cease audio recording whenever necessary to ensure conversations are not recorded between a person in custody and the person's attorney, religious advisor or physician, unless there is explicit consent from all parties to the conversation (Penal Code § 636).

413.6.2 EXPLOSIVE DEVICE

Many recorders and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices should not be used within 50 feet of where an explosive device may be present.

413.7 REVIEW OF RECORDINGS

It is the policy of the Orange County District Attorney to extend to its members the ability to review all available Bureau audio/video recordings when writing reports, preparing for courtroom testimony and prior to making voluntary statements. However, members should not use the fact that a recording was made to write a less detailed report, or use the recording as a substitute for their own perceptions and observations. Whenever a member reviews Bureau audio/video recordings to refresh his or her recollection for the purpose of report writing, it shall be documented on the initial crime report or any supplemental reports that such Bureau recordings were reviewed. Members shall not retain personal copies of recordings (unless maintained on a Bureau computer within the office).

It is the discretion of the Bureau Chief or designee, to prohibit the review of any audio/video recordings if it is determined to be in the best interest of the Bureau and/or County.

Members who are the subject of an administrative discipline investigation, may be required to give a statement prior to reviewing audio/video recordings.

Members shall not play back Bureau audio/video recordings to allow members of the public to view them.

Supervisors are authorized to review relevant recordings for a specific business purpose such as commendations, training, an official investigation (such as a personnel complaint, administrative investigation or criminal investigation), a clear and reasonable concern of unprofessional conduct, and the review of critical incidents. Audits of recordings will be documented utilizing available system functions.

Recorded files may also be reviewed:

- a. Upon approval by a supervisor, by any member of the Bureau who is conducting an official investigation, such as a personnel complaint, administrative investigation or criminal investigation.

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- b. Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.

413.7.1 POST RECORDING PROCEDURES

- a. Make a notation on the surveillance logs, report, or other documentation of the time, date and place of the recording along with all the participants, including law enforcement personnel who monitored and produced the recording. Also, notate on the CD label, if possible, all pertinent information and the initials of the person responsible for the recording, in other words, who recorded this evidence.
- b. At the very earliest time, the recording should be downloaded into the case file, which is where it shall remain. Any copies needed will be made from the original downloaded recording placed into the case file.

413.8 CALIFORNIA PUBLIC RECORDS ACT (CPRA) AND/OR RELEASE TO MEDIA

- a. Members responding to a Public Records Act are authorized to access and view media in response to the request;
- b. Recordings may be released to the media with permission of the Bureau Chief or designee;

Prior to release of recordings under this section, the Bureau Chief or designee shall make a reasonable attempt to provide advance notice to the member who recorded the media as well as all other members who are recognizable in the recording via chain of command by phone or email.

All recordings should be reviewed by the Custodian of Records prior to public release (see the Records Maintenance and Release Policy § 804). Recordings that unreasonably violate a person's privacy or sense of dignity should not be publicly released unless disclosure is required by law or order of the court.

413.9 ACCIDENTAL ACTIVATION OF THE AUDIO/VIDEO RECORDER

An immediate supervisor should be notified as soon as possible following incidents of accidental or inadvertent recordings of personal events and/or conversations with no evidentiary/business purpose. These events shall be tagged as accidental by the member. If the member requests the accidental recording to be redacted or deleted, the commander of the Professional Standards Division will review the recording and make a determination as to whether the recording was accidental.

- a. If the commander determines the recording was accidental, with no evidentiary/business purpose, the recording will be deleted within 30 business days from the date of the commander's determination unless deletion of the recording would violate the law. The member will be notified of the commander's determination. A recording determined to be accidental by the commander, with no evidentiary/business purpose, will not be shared with anyone absent a court order.
- b. If the commander determines the recording was accidental, but a portion is of evidentiary/business purpose, the recording containing the personal event or conversation will be redacted within 30 days from the date of the commander's determination unless redaction of the recording would violate the law. The member will be notified of the commander's determination. The portion of the

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recording determined to be accidental by the commander, with no evidentiary/business purpose, will not be shared with anyone absent a court order.

If the commander determines the recording was not accidental, and/or will not be deleted or redacted, the member may appeal that determination with the Bureau Chief. Should the Bureau Chief come to the same determination as the commander, the final decision will be made by the District Attorney.

413.10 RETENTION OF RECORDINGS

Recordings of the following should be retained for a minimum of two years (Penal Code § 832.18):

- a. Incident involving use of force by an investigator
- b. Officer-involved shootings
- c. Incidents that lead to the detention or arrest of an individual
- d. Recordings relevant to a formal or informal complaint against an investigator or the Orange County District Attorney Bureau of Investigation

Recordings containing evidence that may be relevant to a criminal prosecution should be retained for any additional period required by law for other evidence relevant to a criminal prosecution (Penal Code § 832.18).

All other recordings should be retained for a period consistent with the requirements of the organization's records retention schedule but in no event for a period less than 180 days.

Records or logs of access and deletion of recordings should be retained permanently (Penal Code § 832.18).

413.10.1 RELEASE OF AUDIO/VIDEO RECORDINGS

Requests for the release of audio/video recordings shall be processed in accordance with the Records Maintenance and Release Policy § 804.

Automated License Plate Readers (ALPRs)

414.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the capture, storage, access, sharing, and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

ALPR technology, also known as License Plate Recognition, provides automated detection of license plates. ALPRs are used by the Bureau to link data associated with vehicle license plates for official law enforcement purposes, including identifying and locating stolen or wanted vehicles, stolen license plates and missing persons. ALPRs may also be used to gather or disseminate information related to active warrants, homeland security advisories (as permitted by California law), law enforcement bulletins, electronic surveillance, suspect interdiction, and stolen property recovery.

414.2 POLICY

The policy of the Bureau of Investigation is to utilize ALPR technology and data consistent with the law and with respect for individuals' privacy and civil liberties. The Bureau will also investigate and enforce unauthorized use of ALPR technology, data, and disclosure of confidential information.

414.3 ADMINISTRATION

The acquisition of ALPR systems and data, installation, and maintenance of Bureau owned/leased ALPR equipment shall be managed by the division commander(s) whose members possess ALPR hardware and /or administrative access to ALPR software. Division commanders may assign members under their command to administer the day-to-day operation of the ALPR equipment and data. In the absence of a division commander, the Bureau Chief will assign a supervising investigator to manage this role.

The assigned supervising investigator and/or division commander(s), or their designee, will be responsible for ensuring vendors have the required safeguards that comply with CJIS standards. Data collected by Bureau owned/leased ALPR equipment, unless copied and booked as evidence, shall be managed by the ALPR provider. The assigned supervising investigator and/or respective division commander(s), or their designee, shall oversee the access, sharing, compliance, training, audit, use, and technical requirements of this policy.

The administration of this policy shall follow the requirements of California Civil Code § 1798.90.5 et seq.

414.4 OPERATIONS

Use of an ALPR is restricted to the purposes outlined in this policy. Only Bureau members who have received Bureau-approved training are authorized to operate ALPR equipment and access ALPR data. Bureau members shall not use, or allow others to use the equipment or database records for any unauthorized purpose (California Civil Code § 1798.90.51; California Civil Code § 1798.90.53).

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- a. An ALPR shall only be used for official law enforcement business.
- b. An ALPR may be used in conjunction with any routine patrol operation or criminal investigation. Reasonable suspicion or probable cause is not required before using an ALPR.
- c. While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped cars to canvass areas around homicides, shootings, arson events, bombings, and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.
- d. No member of this Bureau shall operate ALPR equipment or access ALPR data without first completing Bureau-approved training.
- e. No ALPR operator may access Bureau, state or federal data unless otherwise authorized to do so.
- f. The investigator shall verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert.
- g. Bureau members shall access ALPR data only from an approved Bureau workstation, MDC, or Bureau-issued mobile device.
- h. Investigators are not authorized to respond Code 3 to an ALPR "hit" unless exigent circumstances exist and must comply with Bureau Policy § 306 Investigator Response to Calls.
- i. Non-criminal history information contained within databases accessed through CLETS, NCIC or other DOJ criminal justice systems, as well as California law enforcement agencies' (LEAs') individual databases, should not be used for the purpose of immigration enforcement.
- j. Users should not include criminal history information or other personal identifying information of a target suspect (beyond the suspect's last name) or information obtained from CLETS into ALPR information fields accessed by those not authorized to receive CLETS information.

414.5 DATA COLLECTION AND RETENTION

All ALPR data is hosted or otherwise provided using a "Third-Party ALPR Provider" (such as those contracts originated by the Bureau, law enforcement contract partners, businesses, homeowners' associations ("HOAs"), etc.). ALPR data that is provided by a Third-Party ALPR Provider is the sole responsibility of that company (service provider). The Third-Party ALPR Provider owns and is solely responsible for:

- a. The data it makes available.
- b. Ensuring its data will not be stored outside of the United States or Canada.
- c. Ensuring its employees who have access to unencrypted criminal justice information will undergo training and background checks.

Flock Group Inc. ("Flock") retains their ALPR data for 30 days and Vigilant Solutions ("Vigilant") retains their ALPR data for 1-year. This is done to allow for the proper investigation into reported criminal activity. These vendors will purge their data at the end of their respective storage dates.

All ALPR data downloaded to the Bureau server should be stored for a minimum of one year (California Government Code §34090.6) and in accordance with the established records retention schedule.

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Thereafter, ALPR data should be purged unless it has become, or is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a discovery request or other lawful action to produce records. In such circumstances, the applicable data should be uploaded as evidence from the server into the Bureau's Digital Evidence Management System (DEMS) and documented in a related case report.

The disposition of evidence varies based on the type of case (felony or misdemeanor) and/or crime involved. All ALPR data uploaded to the Bureau's Digital Evidence Management System (DEMS) or copied and booked as evidence, shall follow the Bureau's evidence booking, handling, storage, and retention requirements as outlined in Property & Evidence Policy 801.

414.6 ACCOUNTABILITY

All data shall be closely safeguarded and protected by both procedural and technological means. Each user is responsible for safeguarding their personal login and password. The Bureau shall observe the following safeguards regarding the access and use of stored data (California Civil Code § 1798.90.51; California Civil Code § 1798.90.53):

- a. All ALPR data shall be accessible only through a login/password-protected system capable of documenting all access of information by date and time, license plate number or other data elements used to query the ALPR system, purpose for accessing the information, case number or incident number, username of the person who accesses the information, and as applicable, the organization or entity with whom the person is affiliated (California Civil Code § 1798.90.52). If applicable, multi-factor or two-factor authentication will be utilized in addition to login/password.
- b. Users approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relates to a specific criminal investigation or Bureau-related civil or administrative action.
- c. Users approved to access ALPR data will receive relevant training prior to independently accessing the data.
- d. ALPR system audits shall be conducted on a bi-annual basis to ensure the information accessed or used is in compliance with all applicable privacy laws. These audits will be conducted by the ALPR user's supervisor.
- e. Audits will include an ALPR use report. The report will be used to conduct bi-annual audits of ALPR responses. Any potential violation of the law or Bureau policy will be forwarded to the commander of the involved user for further investigation, which may result in revocation of ALPR system access, training and/or discipline.
- f. Supervisors will grant Administrator access to select members who can train users on the ALPR system. Administrators will also set up new user accounts and assist supervisors with ALPR operations and obtaining audit data and records.
- g. ALPR administrators will provide a list of ALPR users to any supervisor upon request. A user list will also be given to the supervisor(s) responsible for administrative duties and audits where the ALPR user is assigned.
- h. Users of ALPR must recognize that the data collected from the ALPR device, and the content of the referenced Hot Lists, consists of data that may or may not be accurate. To the greatest extent

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possible, information obtained from ALPRs should be verified from separate law enforcement information sources to confirm the vehicle or subject's identity and justification for contact.

- i. Users of ALPR data must, to the fullest extent possible, visually confirm the license plate or vehicle characteristics correspond with the digital image of the license plate or vehicle generated by the ALPR.
- j. Users of ALPR will be required to implement the reasonable security features outlined in this policy pursuant to California Civil Code 1798.90.51.
- k. Users of ALPR equipment or accessing ALPR data are required to acknowledge that they have read and understood this policy prior to use of the ALPR system.
- l. Upon separation from the Bureau, access to any ALPR data will be immediately revoked.

For security or data breaches, see the Records Maintenance and Release Policy § 804.

414.7 AUDITS

Access and use of ALPR data is logged for audit purposes. Audit reports will be structured in a format that is understandable, useful, and will contain:

- a. The name of the user.
- b. The date and time of access.
- c. The specific data accessed.
- d. The supplied authorized law enforcement or public safety justification for access.
- e. A case, incident, or reference number associated with the ALPR data query.

414.8 TRAINING

ALPR administrators shall ensure that authorized ALPR users receive Bureau-approved training to use or access the ALPR system (California Civil Code § 1798.90.51; California Civil Code § 1798.90.53). Bureau training for use of ALPR systems shall address compliance with this policy including data privacy and security.

414.9 THIRD-PARTY ALPR

Many local governments, businesses and HOAs have entered contracts with companies who provide ALPR services ("Third-Party ALPR Providers"). The O.C.D.A.'s Bureau of Investigation can use ALPR equipment and data owned by third-party ALPR providers if there is an agreement with the contracting entity. Allied law enforcement agencies can also share their ALPR data with members of the Bureau. Third-party ALPR data is to be handled consistent with California Civil Code § 1798.90.5 et seq.

The owner of the third-party ALPR system is responsible for the retention of data, as well as, any Public Records Act (PRA) requests related to the system they own. Any PRA requests for data from a third-party ALPR system shall be governed by the third-party ALPR provider's PRA policy and practices. Bureau members will not retain data from third-party ALPR systems unless that specific information is used during official Bureau duties.

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414.10 CREATION AND USE OF "HOT LISTS" OR "CUSTOM HOT LISTS"

Hot Lists are lists of vehicles or license plates associated with active investigations. Third-party ALPR systems may automatically generate Hot Lists for license plate information that has been entered into the California Law Enforcement Telecommunications System (CLETS). Examples of investigations include Amber Alerts or other missing children, Silver Alerts or other critical missing elderly persons, missing adults, stolen vehicles, or stolen license plates. The purpose of these lists are to alert law enforcement personnel that a vehicle displaying a license plate number that is included on a Hot List has been observed by an ALPR camera.

Custom Hot Lists can also be created for active investigations or official Bureau business, but may only be created by authorized members.

1. Authorized members permitted to create a "Custom Hot List" include:
 - a. Dispatchers
 - b. Supervisors
 - c. Investigators
 - d. Investigative Assistants
 - e. Research/Crime Analysts
2. All Custom Hot Lists must be approved by a Bureau supervisor prior to posting or distributing.
3. When a member receives a Hot List or Custom Hot List alert, the member must verify:
 - a. The ALPR read was accurate.
 - b. The issuing state matches the plate on record.
 - c. The circumstances that triggered the alert for a stolen vehicle or lost/missing stolen license plate are still valid by verifying through CLETS.
 - d. Circumstances that triggered the alert for all other cases not listed in subsection (c), must be accompanied with independent reasonable suspicion or legal justification for a detention.
 - e. The type of response requested in a Custom Hot List entry (e.g., Stop and F.I., Crime Vehicle, Felony Warrant, etc.).
4. If the record in the Hot List or Custom Hot List was created based on the wanted status of the registered owner (the registered owner has an outstanding warrant for their arrest), the Bureau member must be cognizant of the fact the driver may not be the wanted subject and should have independent reasonable suspicion or legal justification for the stop.
5. Members must have reasonable suspicion to initiate a traffic enforcement stop on the vehicle, independent from the Hot List or Custom Hot List alert.

414.11 SHARING AND RELEASING ALPR DATA

Pursuant to California Civil Code Section 1798.90.55, subdivision (b), ALPR data shall not be sold, shared, or transferred, except to another public agency, and only as otherwise permitted by law. SB34 does not permit California Law Enforcement Agencies (LEAs) to share ALPR information with private entities or out-of-state or federal agencies, including out-of-state and federal law enforcement agencies. Members may share ALPR data on a case-by-case basis with other law enforcement or prosecutorial

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agencies for official law enforcement purposes or as otherwise permitted by law, using the following procedures:

1. The agency makes a written request for the ALPR data that includes:
 - a. The name and description of the agency.
 - b. The name of the person requesting the information.
 - c. The intended purpose for obtaining the information.
 - d. A statement that the data will be kept confidential and will not be used or disclosed in any manner that is prohibited by California Civil Code section 1798.90.5 et seq.; California Penal Code section 13778.2; California Government Code sections 7284.6 and 7921.505(c)(5); or any other laws that currently exist.
2. The request is reviewed by the Bureau Chief or the authorized designee and approved before the request is fulfilled.
3. The approved request is retained on file according to the County of Orange retention requirements.
4. The ALPR data authorized to be shared with other law enforcement agencies must be accompanied by the Bureau's ALPR Sharing Agreement Letterhead and ALPR Sharing Agreement (see links to forms below).

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy § 804 (California Civil Code § 1798.90.55). See section 414.8, Third Party ALPR, regarding PRA requests involving Third-Party Providers.

In responding to a PRA request or compulsory process in litigation seeking the production of ALPR information, California law enforcement agencies should consider all applicable privileges and exemptions depending on the nature of the request, bearing in mind the command in California Civil Code section 1798.90.55(b), that an ALPR end-user or operator "shall not sell, share, or transfer ALPR information, except to another public agency, and only as otherwise permitted by law."

The release of ALPR data which has been uploaded to the Bureau's Digital Evidence Management System (DEMS) or copied to disc format and booked into evidence shall be released in accordance with Policy 801 - Property and Evidence.

[ALPR Sharing Agreement \(OCDA BOI\).pdf](#)

[ALPR Sharing Agreement Letterhead.docx](#)

Small Unmanned Aircraft System (sUAS)

415.1 PURPOSE AND SCOPE

This policy establishes guidelines for the use of Small Unmanned Aircraft Systems (sUAS) by the Orange County District Attorney Bureau of Investigation. It is our mission to assist investigators in enhancing public safety while protecting the rights and privacy of the general public.

Bureau of Investigation members shall make every effort to avoid invading a person's reasonable expectation of privacy when operating a sUAS. When operating a sUAS, the Bureau will abide by all Federal Aviation Administration (FAA) regulations and will obtain the proper authorization for flight. Additionally, the need, availability and use of the sUAS will not supersede the issuance of a warrant when otherwise required.

Members involved in the deployment of a sUAS will consider the protection of individuals' civil rights and reasonable expectation of privacy as a key component of any decision made prior to deploying the sUAS. sUAS remote pilot in command (RPIC), pilots and visual observers (VO) will ensure operations of the sUAS intrude as little as possible upon those who live, work and visit within the area of deployment.

415.2 POLICY

To accomplish this primary goal, the Bureau will adhere to the following:

Authorized uses of Bureau sUAS include:

- a. Aerial photography and video for:
 1. Static crime scenes or traffic collision investigations for evidence identification, location and /or collection purposes.
 2. Target locations of a search / arrest warrant for information gathering that enhances the safety of officers, suspects, victims and the community at large.
 3. Social media, marketing materials and publications for public relations purposes.
- b. Natural disaster evaluation and response.
- c. Searches for missing persons, suspects or articles (such as weapons) within established police perimeters or search zones when deployment is intended to enhance the safety of officers, suspects, victims or the community at large.
- d. Deployment during a high-risk warrant service when deployment is intended to enhance the safety of officers, suspects, victims or the community at large.
- e. Security operations at large public gatherings, where images are not recorded except for criminal behavior.
- f. In support of investigative purposes for the Environmental Protection Unit, where photos and videos are recorded for evidence identification, location and/or collection.
- g. Training in an environment closed to the public.
- h. Any other mission that has been approved by the Bureau Chief or their designee.

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When the sUAS is being flown pursuant to any authorized use above, the onboard camera will be turned away from occupied structures as feasible or the recording function will be turned off to minimize inadvertent video or still images of uninvolved persons. However, it is recognized that under certain exigent circumstances threatening public or officer safety, the aforementioned efforts may not always be possible or appropriate.

Unauthorized Uses of Bureau sUAS include:

- a. To Conduct random surveillance activities.
- b. Arming any drone with any form of lethal or less-lethal weapon.
- c. To target a person based solely on individual characteristics, such as, but not limited to race, ethnicity, national origin, religion, disability, gender or sexual orientation.
- d. To harass, intimidate or discriminate against any individual or group.
- e. Any other use that is not authorized by law.

Notwithstanding the uses or restrictions above, the Bureau Chief or their designee must approve any other use of the sUAS.

415.3 DEFINITIONS

Federal Aviation Administration (FAA) – The agency of the United States Department of Transportation responsible for the regulation and oversight of civil aviation within the U.S., as well as operation and development of the National Airspace System. Its primary mission is to ensure safety of civil aviation.

Unmanned Aircraft System (sUAS) – Unmanned aircraft and the equipment necessary for the safe and efficient operation of the aircraft. An unmanned aircraft is a component of a sUAS. It is defined by the statute as an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft (Public Law 112-95, § 331(8)).

Remote Pilot in Command (RPIC) – A person who holds a remote pilot certificate with a sUAS rating and has the final authority and responsibility for the operation and safety of the sUAS operation conducted under FAA Part 107 or Certificate of Authorization, whether or not physically piloting the sUAS.

sUAS Pilot – A person who is piloting (physically) the flight of the sUAS.

sUAS Visual Observer – Ground-based observers who assist with operations and will assist the remote pilot in command to utilize the "see and avoid" technique by scanning the area for air traffic or possible hazards.

sUAS Team – Team of authorized sworn personnel associated with the operation of the sUAS.

415.4 MANAGEMENT/SUPERVISION OF SMALL UNMANNED AIRCRAFT SYSTEM (SUAS)

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A supervising investigator designated by the Chief or their designee will supervise the sUAS team. The supervising investigator will be responsible for the overall management of the team. Given the technical nature of aviation, the sUAS team's supervisor may, at his or her discretion, assign responsibility for sUAS operations to a team leader with the necessary knowledge, skills and abilities to safely and effectively manage the day-to-day operation of the sUAS team.

In consultation with the sUAS team leader, the deployment of a sUAS shall only be for authorized missions and by the approval authority depicted in the below matrix:

Authorized Use of sUAS	Approval Authority	Deployment Type	Member
Aerial photography and video for crime scenes, traffic collisions, social media, marketing, and search warrants	Division Commander	Static	Any sworn member of the team.
Natural disaster evaluation and response	Bureau Chief or designee	Dynamic	Any sworn member of the team.
Searches for missing persons, suspects or articles	Bureau Chief or designee	Dynamic	Any sworn member of the team.
High-risk warrant service	Division Commander	Dynamic	Any sworn member of the team.
Security operations at public gatherings	Division Commander	Static	Any sworn member of the team.
Environmental Protection Unit, evidence collection	Division Commander	Static	Any sworn member of the team.
Training		Static	

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	sUAS Supervising Investigator		Any sworn member of the team.
Any other use	Bureau Chief or designee	As directed	Any sworn member of the team.

415.5 DEPLOYMENT GUIDE

Static

A static situation is one in which the sUAS could be deployed in an environment controlled by members of the Bureau and in a manner that is relatively non-intrusive to the general public, yet provides a benefit and value to the Bureau and its mission. A static situation must meet the following requirements:

- a. The area under the airspace where the sUAS is operating is clear of persons who are not directly participating in the operation of the sUAS unless they are in a stationary vehicle or structure that can provide reasonable protection from a falling sUAS (FAA Part 107.39).
- b. Steps must be taken to exclude non-participatory persons from entering the area under the sUAS operation.
- c. The incident that precipitated the sUAS deployment is not an in-progress crime or a search for a person (suspect or otherwise).
- d. Deployment of the sUAS in a static situation would require at least two personnel:
 1. Remote Pilot in Command (RPIC)
 2. Visual Observer (VO)
 3. Additional personnel may be required based on the evaluation of the operation by the RPIC (such as a cover officer for the sUAS team).

Dynamic

A dynamic situation is one in which the sUAS could be deployed in a less than stable or volatile situation. The area under the sUAS may not be completely secured by Bureau personnel and, therefore, may require flying over persons or under rapidly changing conditions. These may include situations that involve imminent threat to life or great bodily injury. A dynamic situation will require increased situational awareness and coordination with the sUAS team members and the Incident Commander. A dynamic situation is any situation that does not meet the definition of a static situation. Examples of a dynamic situation include, but are not limited to:

- a. Any incident involving a natural disaster response
- b. Actively searching for missing persons or suspects
- c. High-risk warrant service

Personnel guidelines for deployment of the sUAS in a dynamic situation:

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- a. As in a static situation, there must be at least two team members, a RPIC and a VO, assigned to the operation.
- b. Due to the potential volatile and changing nature of a dynamic situation, it is very likely that more personnel will be required to safely and effectively execute the mission.
- c. Additional considerations:
 1. Additional VOs may be needed due to buildings and other obstructions.
 2. Cover officer(s) to ensure the safety of the operation within the context of the specific incident and security of the sUAS Team.
 3. It may be preferable to locate the sUAS landing zone / base of operation away from the command post.
 4. Reliable method of communication between RPIC and VOs
 5. A dedicated VO to operate the camera on the sUAS

415.6 SUPERVISING INVESTIGATOR DUTIES

The supervising investigator is responsible for the following:

- a. Ensure that RPICs, pilots and VOs receive the proper training to fulfill the duties of their respective roles.
- b. Ensure that members of the sUAS team are receiving monthly training.

415.7 SUAS TEAM LEADER

The sUAS team leader, who will be designated by the supervising investigator, is responsible for the following:

- a. Ensuring all sUAS team members understand applicable regulatory requirements, standards, and organizational safety policies and procedures.
- b. Observe and control safety systems through monitoring and supervision of sUAS pilots and visual observers.
- c. Coordinate training for the sUAS Team and VOs. RPIC and VO performance and compliance with organizational goals, objectives and regulatory requirements.
- d. Review the standards and practices of agency personnel as they impact flight safety.
- e. Act as the flight safety officer or designate a member of the sUAS team to fulfill the role of flight safety officer. The flight safety officer will provide the sUAS team with up-to-date safety information, conduct training session debriefs, identify safety-related concerns and corrective actions, and reinforce that safety is the responsibility of all members of the sUAS Team.

415.8 SUAS PILOTS AND VISUAL OBSERVERS

sUAS team members must acquire a valid FAA Part 107 Certification within 90 days of joining the sUAS team. On any given mission, a sUAS team member may be called upon to perform the duties of either a sUAS pilot or a sUAS visual observer. sUAS team members must maintain proficiency in the operational standards of both positions. The Bureau Chief or his/her designee is responsible for determining the

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number of certified personnel necessary to best serve the Bureau's needs. The sUAS Team supervising investigator or designee can designate other sworn investigators as visual observers, who are not part of the sUAS Team and not FAA Part 107 certified. The supervising investigator or designee shall create a training program for the visual observers and maintain a list of active visual observers.

The primary duty of a sUAS Pilot is to operate the sUAS in a safe and effective manner in accordance with FAA regulations and Bureau procedures. Pilots must remain knowledgeable of all of the above guidelines at all times.

The primary duty of a VO is to coordinate operations between the sUAS and ground personnel. The VO will also identify risks to police personnel, the public and property, including the sUAS and take immediate steps to coordinate with the RPIC to mitigate or avoid these risks.

In order to fly a mission (other than flights required for training or currency), pilots must have completed three (3) currency events within the previous 90 days. Currency events include landings, takeoffs and simulator flights.

415.9 SUAS FLIGHT CREW RESPONSIBILITIES AND COORDINATION

sUAS REMOTE PILOT IN COMMAND (RPIC) RESPONSIBILITY

- a. The sUAS RPIC, in conjunction with the approving authority, is directly responsible for and is the final authority over the operation of the sUAS.
- b. sUAS Pilots and Remote Pilots in Command have the absolute authority to reject a flight due to weather, aircraft limitations or physical conditions. No member of the Bureau, regardless of rank, can order a sUAS Pilot to conduct a flight when, in the opinion of the pilot, it would be too unsafe to do so.
- c. sUAS Pilots are responsible for compliance with FAA regulations and Bureau sUAS Policy.
- d. Pilots shall communicate as warranted with Air Traffic Control (ATC) and other aircraft. When under the control of ATC, the pilot will not monitor law enforcement radio communications.
- e. Pilots shall be responsive to the requests of the sUAS Visual Observer in order to accomplish the mission.
- f. Pilots shall be responsible for documentation for mission training and updating of flight books.

sUAS VISUAL OBSERVER (VO) RESPONSIBILITY

- a. See and avoid any obstacle that will reduce safety during the mission or training.
- b. sUAS visual observers are responsible for the law enforcement aspect of the deployment.
- c. Operate any attachments to the drone, allowing the sUAS pilot to maintain complete focus on the operation of the drone.
- d. Remain alert for suspicious persons or activities on the ground and coordinate response by ground units. sUAS visual observers shall monitor radio updates.
- e. Assist the sUAS pilot to achieve safe operation of the sUAS.

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sUAS FLIGHT CREW COORDINATION

- a. The sUAS pilot and sUAS visual observer will work closely to form the crew that will ultimately accomplish mission objectives.
- b. The sUAS pilot and sUAS visual observer are the custodians of evidence. In this capacity, they are responsible for the safeguarding and proper processing of any evidence including, but not limited to, digital imagery to include still and video images.
- c. In the interest of safety, both the sUAS pilot and visual observer must be comfortable with any decision made while working as a crew. This begins when deciding whether to accept the mission and continues throughout the mission.
- d. Every sUAS crewmember has an obligation to communicate any concerns to the sUAS team leader, remote pilot in command or sUAS supervisor prior to flight.
- e. sUAS visual observers have the right, as well as the responsibility, to question the sUAS pilot whenever they do not understand something, or are uncomfortable with certain procedures, weather, mission parameters, etc.

415.10 PREFLIGHT AND FLIGHT PROCEDURES

PREFLIGHT PROCEDURE

Preflight procedures will be conducted prior to each flight mission and will be done in accordance with the checklist prepared by the Bureau sUAS team leader or designee and in accordance with the manufacturer's recommendations. Any issues found during the pre-flight procedures should be documented in the sUAS log and it will be the decision of the sUAS pilot to determine if the issue will alter the safe flight and operation of the sUAS.

LAUNCH PROCEDURES

1. Prior to the launch of the sUAS, the Pilot is responsible for ensuring the checklist is completed and the aircraft ground station is safe to operate.
2. The sUAS Pilot will communicate with the Visual Observer to confirm the area is visibly clear of any low-flying air traffic, hazardous obstacles or safety hazards prior to takeoff.
3. As warranted, the sUAS Pilot is responsible for notifying the appropriate FAA facility, in accordance with the rules and guidelines set forth by the FAA.

415.11 POSTFLIGHT AND FLIGHT PROCEDURES

POST LAUNCH

- a. Although the drone can fly autonomously, the sUAS pilot and visual observer will monitor the aircraft, base station and payload systems to ensure the drone is flying as designed and maintains the proper altitude.
- b. After takeoff, sUAS crewmembers shall perform tasks according to their job assignment, while communicating clearly and effectively to monitor the drone as it climbs to the desired mission altitude.

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LANDING PROCEDURES

- a. The pilot will determine if the objectives of the mission are complete or if the mission is too unsafe to continue prior to landing the aircraft.
- b. The pilot will confirm with the visual observer as necessary that the flight path to the “return home” location is clear prior to giving the command for the sUAS to “return home.”
- c. The visual observer will monitor the aircraft as it is landing to ensure a proper landing. If the aircraft is not landing as desired or commanded, the VO will notify the pilot, who will determine whether to abort the landing.
- d. As warranted, it will be the responsibility of the RPIC to ensure contact with the appropriate Air Traffic Control Tower in accordance with FAA guidelines to advise completion of the mission.

415.12 SUAS COLLISIONS

- a. If a collision occurs during the operation of the sUAS and results in serious injury to any person, any loss of consciousness, or if it causes damage to any property (other than the sUAS) in excess of \$500 to repair or replace the property, notification shall be made to the Flight Standards District Office located in Long Beach within 10 days, per FAA guidelines.
 1. Flight Standards District Office for Orange County https://www.faa.gov/about/office_org/field_offices/fsdo/lgb/Long_Beach_Flight_Standards_District_Office (562) 420-1755 - Office Address: 5001 Airport Plaza Drive, Long Beach, CA 90815
- b. While at the scene, the remote pilot in command shall notify the sUAS supervising investigator or the Incident Commander, who shall respond to ensure photographs of the collision scene and any resulting injuries or property damage are taken. The remote pilot in command shall be responsible for completing an incident report describing the incident and damage. If the collision results in less than \$500 in damage, or the only damage is to the sUAS, an incident report shall be completed by the pilot and notification to the sUAS supervising investigator shall be made. In either case, the sUAS supervising investigator shall conduct or direct a review of the collision and determine if the collision could have been prevented through maintenance, training, etc., and ensure all necessary paperwork has been submitted.
- c. Regardless of the amount or type of damage that occurred as a result of a sUAS collision, a County Vehicle Collision/Incident Report shall be submitted to County risk management within 3 days of the incident.
 1. A Bureau member may utilize the assistance of a labor representative prior to completing the report.

415.13 DIGITAL MULTIMEDIA EVIDENCE COLLECTION AND STORAGE

- a. The collection of data to include, but not limited to, digital photographs, videos, and IR images will be limited to the extent necessary to accomplish the mission.

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- b. Only data that meets legitimate training objectives, or has evidentiary value, will be retained after the mission has concluded. Any retained data will be safeguarded to protect the privacy of the citizens. All other data will be destroyed via electronic deletion. Digital flight logs are exempt from this requirement. This data will be stored per Bureau policy.
- c. As a general rule, the sUAS pilot will not record during operations.
- d. If the sUAS pilot determines circumstances exist that recording will produce something of evidentiary value, the sUAS pilot may start and stop the recording as necessary.

415.14 REVIEW OF RECORDINGS

It is the policy of the Orange County District Attorney to extend to its members the ability to review all available Bureau audio/video recordings when writing reports, preparing for courtroom testimony and prior to making voluntary statements. For further detailed information, refer to section 413.7 of this policy manual.

415.15 MAINTENANCE

A properly maintained sUAS is essential to its safe operation. Compliance with the preflight checklist, post flight inspection and the immediate repair of mechanical problems will ensure the availability and safety of the Bureau's sUAS.

The sUAS team leader can designate a sUAS maintenance officer who will coordinate maintenance for the sUAS. This assignment can be in addition to other duties of a team member or someone outside the sUAS team. If possible, maintenance will be scheduled when it will have the least impact on operations. The maintenance officer shall notify the sUAS supervising investigator and sUAS team leader of the operational status of the sUAS. The maintenance officer shall be responsible for keeping the sUAS maintenance record updated.

415.16 TRAINING

- a. All members within the sUAS team who will act as a sUAS pilots, RPICs or VOs, shall be trained and will maintain proficiency in their pilot/observer abilities. Each sUAS team member shall be a certified Part 107 operator in accordance with FAA requirements and standards within 90 days of joining the team, which will be at the cost of the Bureau. The sUAS pilot will stay proficient in the job function by participating in regularly scheduled Bureau training sessions. All members of the sUAS team will maintain proficiency by participating in ongoing training, which will occur during working hours. The training will include skills-based exercises consistent with public safety deployment scenarios. A sUAS pilot who does not have any documented training or flight time within a span of 90 days (due to vacation, court appearance, etc.) will have to show proficiency prior to any deployment, and the supervising investigator or team leader may suspend his/her duties until the member has had updated training and completed a qualification course. The sUAS pilot can also utilize a simulator program (if available and with approval) to stay proficient if there are scheduling issues or a lack of flight training due to weather.

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- b. Data Retention: With the exception of training and demonstration purposes, when the sUAS is utilized to capture video or still images the recordings shall be reviewed for evidentiary value. Any items of evidentiary value shall be downloaded and given to the assigned case investigator to be booked as evidence under the related case number. Audio and/or images captured by a sUAS and booked as evidence shall be retained in accordance with Bureau Property and Evidence Policy § 801.
- c. Documentation: The sUAS remote pilot in command or an involved crewmember shall document all flights on a sUAS utilization form, or provide the below information to the sUAS team leader to record on the sUAS team flight log. The documentation shall, at minimum, include:
 - 1. All flight times, hours and locations (flight path if available)
 - 2. Reason for the flight
 - 3. Roles of the personnel and name of approving supervisor
 - 4. Any additional relevant information to the mission
- d. Statistics: The sUAS team leader should submit statistics to the sUAS supervising investigator for review each month. These reports should include:
 - 1. Number of flights
 - 2. Personnel involved
 - 3. Total flight time
 - 4. Any maintenance completed
 - 5. The number of flights resulting in the collection and retention of data and any additional relevant information regarding missions performed or training exercises

415.17 STORAGE

sUAS and associated equipment shall be stored in a secured Bureau of Investigation location, vehicle or approved offsite location. The sUAS shall not be operated for personal use.

Tactical Alert Plan

416.1 PURPOSE

This procedure establishes the Tactical Alert Plan as the *Standard Operating Procedure* for responding to civil disturbances or other extraordinary occurrences.

416.2 POLICY

The Orange County District Attorney's Office, Bureau of Investigation, Tactical Alert Plan should be implemented whenever a Tactical Alert Warning or Level 1, 2 or 3 has been declared by the appropriate level of authority. Tactical Alert Advisory Form

The primary objectives of the Tactical Alert Plan are to:

- a. Ensure the safety and security of the community, members of the Orange County District Attorney's Office and Orange County District Attorney assets.
- b. Deter illegal activity.
- c. Provide an organized police response.
- d. Assist in the recovery process.

416.3 EXCEPTIONS

It is virtually impossible to plan for every contingency that an Incident Commander may encounter. Therefore, Incident Commanders in charge of a tactical alert shall have the authority to deviate from this plan when circumstances dictate the necessity to do so. However, no deviation from the plan authorizes anyone to violate federal, state, or local ordinance.

When the Orange County District Attorney's Office, Bureau of Investigation, foresees a critical problem developing, we should immediately implement our Tactical Alert Plan to the appropriate level of alert.

The designated Incident Commander shall mobilize the required resources and equipment necessary to control the incident.

In any civil disturbance or other extraordinary occurrence, the Incident Commander shall act promptly and lawfully with an appropriate response to curtail criminal activity at the start of the disturbance when there is greatest chance of stopping violence or the destruction of property from spreading.

416.4 DEFINITIONS

Incident Commander: The individual responsible for on-scene incident activities, including developing incident objectives and ordering and releasing resources. The Incident Commander has overall authority and responsibility for conducting incident operations.

Tactical Alert Plan

- A. Who qualifies as an Incident Commander? - The individual taking on the responsibilities of an Incident Commander can vary. Generally, the highest ranking Bureau staff member on scene will assume the role of the Incident Commander until relieved by higher authority. When there is no official staff member with rank available, the senior investigator on scene shall take on the role as the Incident Commander, until relieved by higher authority.
- B. Incidents occurring at the OCDA headquarters building - In general, the Incident Commander for pre-planned events occurring at headquarters will be the supervising investigator assigned to the event, until relieved by higher authority. The Incident Commander for spontaneous events occurring at headquarters will be the supervising investigator assigned as the "Officer of the Day", until relieved by higher authority.
- C. Authority to elevate or de-escalate Tactical Alert levels - Any Incident Commander shall have the authority to elevate or de-escalate from a Tactical Alert Warning to a Tactical Alert Level 3 and Tactical Alert Level 2. They may also de-escalate from a Tactical Alert Level 1 to a lower level. Only the Assistant Chief or high shall have the authority to escalate to a Tactical Alert Level 1.

416.5 TACTICAL ALERT LEVELS

The Orange County District Attorney's Office, Bureau of Investigation, has a Tactical Alert Warning and three (3) levels of tactical alert. The Tactical Alert Warning is the lowest level of alert, and Level 1 is the highest level of alert. Each level is as follows:

- A. **Tactical Alert Warning** - A Tactical Alert Warning will be advisory only. This is a Warning/Advisory alert to all Bureau of Investigation managers. The Warning/Alert notification will be done on a Tactical Alert Notification form from the involved commander or supervising investigator, which is most likely involved in, or has knowledge of the incident. When necessary, a commander may decide to notify all Bureau of Investigation staff regarding the Bureau's readiness status. In general, there will be no special deployment.
- B. **Tactical Alert Level 3** - Some advanced planning is necessary in a Tactical Alert Level 3 by the Incident Commander, such as pre-selecting a command post location, or pre-selection of personnel to work the event or incident. The commander or supervising investigator most likely to be in charge of the incident, would ensure that all Bureau managers, and all other Bureau personnel who may be affected by the event, receive a Tactical Alert Level 3 notification. When necessary, a commander may decide to notify all Bureau of Investigation staff regarding the Bureau's readiness status.
- C. **Tactical Alert Level 2** - A Tactical Alert Level 2 should be declared when it is known in advance that an incident is going to occur, or an incident is in progress which will require significant Bureau resources to maintain order. The supervising investigator or commander most likely to be in charge of the incident (Incident Commander) will advise all Bureau managers utilizing the Tactical Alert Notification form, if time permits, of the Tactical Alert. If time does not permit, notification will be done via telephone or other communication system.
- D. **Tactical Alert Level 1** - All Bureau managers will be notified and required to respond when a Tactical Alert Level 1 is declared. The Incident Command System will be activated to the appropriate level needed. All on-duty personnel will remain on duty and will not end their shift until

Tactical Alert Plan

released by the Incident Commander. If necessary, at the direction of the Bureau Chief or his designee, a bureau-wide recall plan will be activated. Once recalled, all personnel will be kept on duty and working until the incident can be downgraded from a Tactical Alert Level 1 to a Level 2, or there is a determination requiring alternative shifts.

416.6 AUTHORITY TO CALL A TACTICAL ALERT

A. Tactical alerts at each particular level can only be called by the following ranks:

Tactical Alert Warning	Supervising Investigator or higher
Tactical Alert Level 3	Supervising Investigator or higher
Tactical Alert Level 2	Supervising Investigator or higher
Tactical Alert Level 1	Assistant Chief or higher

416.7 IMPLEMENTATION OF TACTICAL ALERT LEVELS 1 & 2

A. Upon declaring a Tactical Alert Level 1 or 2, the Incident Commander shall ensure the following Bureau personnel are immediately notified:

1. Bureau Chief
2. Assistant Chief
3. All Commanders

B. Notification will include:

1. Level of Tactical Alert called
2. What incident caused the initiation of the Tactical Alert
3. Who the Incident Commander is
4. Where the command post and staging areas will be located
5. What radio frequency the Incident Commander will be working on
6. Any additional information deemed necessary about the incident

C. If the Incident Commander has been directed by the appropriate authority, they shall initiate a Bureau Recall Plan, and provide recalled personnel the location where to report. Each investigator will be told to report for duty in standard OCDA uniform, with their full complement of equipment (see the Personal Preparedness section of this policy), unless directed to report in alternative clothing.

416.8 IMPLEMENTATION OF A TACTICAL ALERT WARNING OR TACTICAL ALERT LEVEL 3

A. A Tactical Alert Warning is advisory only, while a Tactical Alert Level 3 may require some advance planning. The supervising investigator or commander calling an alert at this level shall complete the Bureau of Investigation Tactical Alert Advisory form and ensure its timely distribution to those personnel and assignments indicated on the form.

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- B. A Tactical Alert Level 3 shall be an event or incident the Bureau has planned for and assigned personnel to work, such as a Victim's Rights March or large VIP press conference.
 - 1. Neither alert shall have an adverse impact on the Bureau's ability to handle routine day to day operations.

416.9 MUTUAL AID REQUESTS

- A. Incident Commanders implementing a Tactical Alert are encouraged to consider a Code Charlie request when necessary through Orange County Communications Control 1. Such a request will allow other agencies to respond with the number of officers they are able to commit to an incident in case mutual aid is required. The responses received as a result of the Code Charlie request will assist the Incident Commander planning or responding to the event or incident.
 - 1. An Incident Commander initiating a Tactical Alert shall have the discretion of submitting a Code Charlie request to Control 1.
- B. Dependent on the incident and if possible, the Incident Commander submitting a Code Charlie request shall attempt to notify Control 1 at least 7 days in advance of the impending event/incident. This will allow jurisdictions sufficient time to notify the requesting agency and Control 1 of the number of officers available for mutual aid.
- C. The Incident Commander will initiate a Code Charlie request by contacting Control 1 at (714) 628-7008. The Incident Commander requesting the Code Charlie shall provide Control 1 with the following:
 - 1. How many officers are being requested
 - 2. Time and date of the incident/event
 - 3. The name and phone number of the Incident Commander
 - 4. The location of the staging area for mutual aid units
- D. During the incident/event, a request for mutual aid response will be initiated via telephone or red channel, indicating "Code Charlie Checkmate".

416.10 MUTUAL AID RESPONSES

- A. This Tactical Alert Plan shall not change the mutual aid process we currently utilize to provide immediate assistance to another law enforcement agency.
- B. If we receive a Code Charlie request, or any mutual aid request from an outside law enforcement agency and it is likely the mutual aid assistance will last longer than two (2) hours, the following procedure shall be followed prior to any Bureau of Investigation response.
 - 1. The supervising investigator assigned as the Officer of the Day, shall immediately notify the Bureau Chief and Assistant Chief of the request.
 - a. The Bureau Chief or the Assistant Chief shall have the authority to authorize deployment of Bureau personnel. In the event the Bureau Chief or the Assistant Chief are unavailable, the senior commander will have the authority to deploy Bureau personnel.
 - 2. A commander shall be assigned to coordinate our agency's response. The commander will be responsible for, but not limited to, the following:

Tactical Alert Plan

- a. Planning and implementing our personnel's response to the mutual aid request.
- b. Consulting with the Assistant Chief, on the deployment and mutual aid plan prior to implementing it whenever possible.
- c. Deploy and manage personnel in accordance with Bureau Policy and Procedures.
 1. Regardless of assignment to a mutual aid incident, all Bureau of Investigation personnel shall adhere to all Bureau of Investigation Policies and Procedures.
- d. Maintain ongoing contact with the Bureau senior management staff.
- e. Complete after-action debriefings and reports.
- f. Complete any needed fiscal reports to ensure financial reimbursement when appropriate (i.e., Federal, State, or local disaster or emergency declarations).

416.11 PERSONNEL RECALL PROCEDURE

- A. In the event of a civil disturbance, or other unusual events, requiring staffing levels which cannot be met by on-duty personnel, it may be necessary to recall off-duty personnel. Their recall shall be done using the process outlined in the Tactical Alert Plan.
- B. The following personnel have the authority to approve or initiate a recall of off-duty personnel:
 1. The Bureau Chief
 2. The Assistant Chief
 3. If both the Bureau Chief and the Assistant Chief are unavailable, a commander will have the authority to initiate a recall of off-duty personnel.
 - a. This policy does not restrict or change the authority of supervising investigators or commanders from having the authority to recall individual investigators or investigative units to handle day to day operations.
- C. Personnel assigned to recall off-duty personnel should utilize the Bureau's electronic/computerized recall system utilizing phone, text and email notifications.
 1. Personnel receiving a recall notification shall immediately respond in a safe manner to the designated staging area.
 - a. Personnel unable to respond due to circumstance, illness or physical limitation shall immediately report their unavailability through the recall system or to their immediate supervisor.

416.12 PERSONAL PREPAREDNESS

- A. Every sworn member of the Bureau of Investigation shall have access to proper work related attire, including:
 1. Daily business attire (refer to Personal Appearance Standards policy)
 2. A full OCDA uniform, including black BDU pants and a black OCDA polo with a badge and shoulder patches. All other work related equipment, including a ballistic vest and Sam Browne belt/holster.

Intranasal Naloxone

417.1 PURPOSE AND SCOPE

Members of the Bureau of Investigation may on occasion have contact with a person who is experiencing or suspected of experiencing an opioid-related, or may unintentionally come in contact with a substance resulting in an opioid-related overdose. The purpose of this policy is to establish procedures to govern the deployment of Naloxone by members of the Bureau. The objective is to reduce injuries and fatalities resulting from opioid overdoses, in the instances where emergency personnel have not yet arrived.

417.2 DEFINITIONS

Opioid - A medication or drug, which in overdose, will cause people to stop breathing. First responders often encounter opiates in the form of Morphine, Methadone, Codeine, Heroin, Fentanyl, Oxycodone and Hydrocodone.

Naloxone - Prescription medications that can be used to reverse depressed breathing and improve alertness. It is marketed under various trademarks, including Narcan®.

Naloxone kit - A Naloxone kit consists of at least the following:

- a. Naloxone nasal spray (4 mg)
- b. Pair of gloves
- c. Mask
- d. Eye protection

417.3 POLICY

It is the policy of the Bureau of Investigation that investigators shall be trained to administer Naloxone in accordance with mandated training guidelines as determined and established by the Orange County Health Care Agency/Emergency Medical Services (HCA/EMS) pursuant to Health & Safety Code § 1797.197 and California Civil Code § 1714.22.

1. Investigators who are trained in accordance with mandated training guidelines shall deploy with Naloxone kits in the field. However, the investigator shall retain the discretion to administer or not administer Naloxone to persons experiencing opioid-related overdoses. There is no legal obligation to administer Naloxone.
2. Investigators who administer Naloxone, are protected from civil and criminal liability if they "act with reasonable care" and "in good faith". This is accomplished by administering Naloxone according to established training protocol.
3. If an investigator has a valid reason for not participating in the program, such as religious objections, the investigator shall be excused with the approval of their commander.

417.4 PROGRAM COORDINATOR

Intranasal Naloxone

The Professional Standards Division Commander shall serve as the Bureau's Program Coordinator and shall work in collaboration with the HCA/EMS. Used, lost, or damaged Naloxone kits shall be reported to the immediate supervisor and returned to Professional Standards for replacement.

417.5 INITIAL AND CONTINUED TRAINING

Investigators may not administer Naloxone without the completion of mandated training by HCA/EMS. All investigators shall receive initial training that shall include, at a minimum, an overview of California Civil Code § 1714.22, patient assessment (signs/symptomology of overdose), universal precautions, rescue breathing, seeking medical attention, and the use of intra-nasal Naloxone. Upon completion of training, investigators shall have their training documented with the Professional Standards Division training manager. Investigators shall receive refresher training as deemed appropriate by HCA/EMS.

417.6 NALOXONE KITS

Naloxone kits shall include at a minimum: gloves, mask, eye protection, atomizer, and Naloxone. Investigators shall be issued a Naloxone kit and deploy with the kit during their tour of duty. If no kits are available, the investigator must notify their supervisor. Naloxone shall not be kept in vehicles for extended periods of time, due to degradation of the product.

417.7 NALOXONE USE

Investigators who have completed mandated Naloxone training by HCA/EMS are authorized to administer Naloxone when they reasonably believe someone is experiencing an opioid-related overdose. Members shall treat the incident as a medical emergency and shall follow these steps when performing this intervention:

1. Identify and assess the individual for responsiveness, pulse and breathing.
2. Ensure EMS is responding.
3. Don personal protective equipment.
4. Establish an airway and stimulate the individual to determine if the person will awaken (sternum rub technique).
5. If the individual does not respond to stimulation and continues to show poor breathing, an investigator may administer Naloxone. Once an investigator makes the determination to administer Naloxone, the following procedures will be followed:
 - a. Peel back the sealed package and remove the device.
 - b. Place the top of the nozzle in a nostril until your fingers touch the bottom of the person's nose.
 - c. Press the plunger to administer/release full dose of the Naloxone into one nostril.
 - d. Assess the individual for breathing and improved consciousness.
 - e. If partial response in breathing or consciousness, repeat second dose in opposite nostril to first dose.
 - f. Investigators will use proper tactics when administering Naloxone. Individuals revived from an opioid overdose may regain consciousness in an agitated and combative state and may exhibit symptoms associated with withdrawal including vomiting, sweating, diarrhea,

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restlessness or irritability. An investigator administering Naloxone shall notify their supervisor, or the Officer of the Day, if their supervisor is unavailable, as soon as practicable.

417.8 DOCUMENTATION/ NALOXONE REPORTS

When Naloxone is administered on an individual, investigators will collaborate with paramedics to ensure the Patient Care Report (PCR) documents that Naloxone was administered including the number of doses administered. Additionally, an investigator who applies Naloxone shall notify a supervisor and document the details of the application on an Information Only report, under the Incident Module, including a description of any evidence of drug use (narcotics, drug paraphernalia, etc.) observed at the scene and witness statements. The supervisor shall obtain and forward a copy of the report to the Professional Standards Division Commander.

Body Worn Cameras

418.1 PURPOSE AND SCOPE

The Orange County District Attorney Bureau of Investigation recognizes that audio and video recording of contacts between Bureau members and the public can provide an objective record of these events. The use of a recording system assists Bureau personnel in the performance of their official duties by providing a record of enforcement and investigative contacts. A recording of an event or contact assists the Bureau in evaluating and improving Bureau practices, tactics, strategy, investigator training and community policing objectives.

The Bureau provides Body Worn Cameras (BWC) to investigators assigned to the AB 109 Task Force for use while on-duty. The primary purpose and objective of the BWC program is to collect evidence for use in criminal investigations, identify and apprehend offenders and obtain, collect and preserve evidence for use in criminal prosecutions. These recorders will also assist investigators in the performance of their official law enforcement duties by providing audio and video records of contacts.

In addition to the primary above mentioned purpose, the use of the BWC is intended to:

1. Accurately capture statements and interactions between investigators and the public, including interviews with suspects, victims and witnesses.
2. Promote accountability and enhance public trust.
3. Assist in the resolution of public complaints and administrative investigations.
4. Enhance officer safety by providing a record for possible future training needs and continuous improvement.
5. Enhance the investigator's recollection for the accuracy of reports and court testimony.
6. Deter criminal activity and uncooperative behavior during police-public interactions.

While recordings obtained from a BWC provide an objective record of these events, it is understood video recordings captured by a BWC (or any recording device) do not necessarily reflect the experience or state of the individual investigator(s) in a given incident. Further, video cameras generally record only a portion of an incident, may lack the context of the event and may not faithfully record light levels, leaving out significant aspects of an incident. Also, a video is a two-dimensional representation of an incident from a particular perspective that may distort distance and other factors associated with depth of field. A video recording has limitations and may depict events differently than the events recalled by the involved investigator and does not present the incident as viewed through human eyes. Differences between human and mechanical processing of information prevent a video from exactly matching what a person sees and hears during a critical confrontation. These differences have to do with the field of view, focus of attention and interpretation. It is understood the BWC may capture information that may not have been

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heard and/or observed by the involved employee and may not capture information observed by the investigator.

BWC recordings shall be considered alongside all other available evidence, e.g. witness statements, personnel interviews, forensic analysis, and documentary evidence, when evaluating the appropriateness of a Bureau member's actions. Unless, the BWC recording is the only evidence, it shall not be used as the sole source when vetting an incident for training, corrective measures, or policy violations.

418.2 GENERAL GUIDELINES

Personnel assigned to the AB 109 Task Force trained to operate and deploy a BWC are responsible for ensuring the BWC is in proper working order by inspecting and testing the BWC. AB 109 Task Force investigators shall wear the BWC on their tactical vest in a forward facing position above the midline torso to maximize the recording field of view.

Unless in an undercover capacity, such as conducting surveillance, or absent an emergency situation requiring swift action (exigent circumstance), AB 109 Task Force investigators should wear their tactical vest and utilize their BWC when taking enforcement actions.

Investigators are required to upload their digital audio/video files at the end of each work shift, unless otherwise approved by a supervisor.

The BWC is the responsibility of the investigator and will be used with reasonable care to ensure proper functioning and reliability. When an investigator determines a BWC is not in proper working order, the investigator shall notify a supervisor as soon as practical to obtain a replacement BWC. The investigator shall also send an email to the Professional Standards Division commander so arrangements for immediate replacement can be made. If the Professional Standards Division commander is not available for immediate replacement, the affected investigator will immediately report to the Professional Standards Division supervising investigator for temporary issuance of a loaner BWC.

418.2.1 NO MEMBER EXPECTATION OF PRIVACY

All BWC recordings are the property of the Bureau. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

418.2.2 CONFIDENTIAL NATURE OF BWC RECORDINGS

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, and other proceedings protected by confidentiality (Refer to Information Technology Use Policy § 315 for further). Investigators shall comply with all applicable laws and policies regarding confidential information. Unauthorized release of BWC recordings may compromise ongoing criminal and administrative investigations or violate privacy rights of those recorded.

418.2.3 VIEWING OF BWC RECORDINGS

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It is the policy of the Bureau to extend to its investigators the ability to review all available Bureau media when writing reports, preparing for courtroom testimony and prior to making voluntary statements (For further refer to Audio Video Recorders, policy § 413.7). The viewing of BWC recordings shall be done only by means of a Bureau owned and/or issued device. The viewing of BWC recordings by means of personally owned PCD's (Personal Communication Devices), to include all mobile phones, Personal Digital Assistants, and other such wireless two-way communication and/or portable internet access devices, is prohibited.

418.2.4 PROHIBITED USE OF BWC RECORDINGS

Investigators shall not use BWC for personal use. Investigators shall not duplicate, copy, edit, alter, erase, or otherwise modify in any manner BWC recordings except as authorized by law and Bureau policy (For further, refer to Computers and Digital Evidence policy § 803). The use of personally owned BWC recording devices, absent critical evidentiary issues, is prohibited.

418.2.5 SURREPTITIOUS USE OF THE BWC

Penal Code § 632 prohibits any individual from surreptitiously recording any conversation in which any party to the conversation has a reasonable belief that the conversation was private and confidential. Penal Code § 633 expressly exempts law enforcement from the prohibition during the course of a criminal investigation which the investigator reasonably believes that such a recording will be for lawful investigative purpose. The following requirements shall apply:

(a) No member of the Bureau of Investigation may surreptitiously record a conversation of any other member of this agency without the express knowledge and consent of all parties.

(b) A sworn member of the Bureau may surreptitiously record any conversation during the course of a criminal investigation if the investigator reasonably believes that such a recording will be beneficial to the investigation.

(1) Any investigator contacting an individual suspected of violating any law or during the course of any official law enforcement related activity is presumed to be engaged in a criminal investigation.

418.3 MEMBER RESPONSIBILITIES

418.3.1 TRAINING

All investigators who are authorized to use BWC equipment must complete mandatory training provided by the Bureau to familiarize themselves with the system before the investigator deploys with the equipment.

418.3.2 BWC PLACEMENT

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BWC equipment generally consists of a body-mounted camera with a built-in microphone and separate viewing device. The BWC camera is to be worn by designated personnel, utilizing an approved mount, in a forward facing position, and above the midline torso to maximize the recording field of view. Other acceptable mounting positions include forward facing on a helmet if equipped with the proper BWC mount. Non-uniformed personnel issued a BWC, may wear the camera on the belt or above, in a forward facing position as an alternative to an audio-recording device for interviews or for use during deployment in the field. When recording interviews, investigators may place the BWC in a position that would better capture the interview, e.g. a table top.

418.3.3 INSPECTION AND TESTING OF EQUIPMENT

Prior to going in service, investigators who have received BWC training and are mandated to deploy a BWC, are responsible for obtaining a Bureau issued BWC for use. Any investigator deploying a BWC shall test the operability of the BWC by visually inspecting its condition, powering it on, and ensuring all prior recordings are downloaded. In the event a BWC has not fully downloaded the prior recordings, the investigator will request a different BWC for the shift.

418.3.4 DAMAGED, MALFUNCTIONING, OR INOPERABLE EQUIPMENT

If the BWC is damaged, malfunctioning, or is inoperable prior to going into service, the investigator shall verbally notify their supervisor and the Professional Standards Division commander via email and obtain a properly functioning replacement BWC.

If the BWC equipment malfunctions or becomes damaged or inoperable while deployed in the field, the investigator shall notify their immediate supervisor as soon as practicable.

418.4 PROCEDURES FOR THE USE OF THE BWC AND ITS RECORDINGS

418.4.1 PRE-EVENT BUFFER RECORDING

When the BWC is activated, the system will automatically retain 30 seconds of video recording prior to activation. This will allow traffic violations, suspicious activity and other unusual happenings to be captured. The BWC does not record any audio during this 30 second period.

418.4.2 REQUIRED ACTIVATION OF THE BWC

This policy is not intended to include every possible situation where the BWC may be used, as there are numerous situations where its use is appropriate. An investigator may activate the system any time the member believes it would be appropriate and valuable to document an investigation, incident or contact.

In general, BWC activation shall begin prior to contacting a member of the public or initiating enforcement action and shall terminate once the investigator has cleared from the contact and/or the incident has concluded.

Consistent with this policy, investigators may lawfully record in any location where the investigator has the legal right to be present. Investigators will not turn off the BWC if a citizen requests it, unless there is an

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exception (see policy § 438.4.3). However, when practical to do so, investigators may inform individuals they are recording, particularly when the advisement may gain compliance, cooperation, or assist in an investigation.

418.4.3 EXCEPTIONS TO REQUIRED ACTIVATION OF THE BWC:

Residents have a reasonable expectation of privacy in their homes. However, when peace officers are lawfully present in a home (warrant, consent, exigent circumstances) in the course of official duties, there is no expectation of privacy, and recording is lawful. If a resident objects to the BWC recording inside their private residence, the investigator may turn off the device in accordance with this policy after considering the totality of the circumstances. Before terminating a recording for reasons of privacy or other concerns, the investigator shall at a minimum document the reasons for not recording in accordance with this policy.

Circumstances when a BWC may not be used include, but are not limited to:

1. If an investigator is unable to activate the BWC prior to initiating enforcement or investigative activities due to officer safety, public safety, or any other critical circumstance.
2. If in the investigator's judgment, a recording would interfere with their ability to conduct an investigation or may be inappropriate, due to the victim or witness' sensitive circumstances (e.g., nudity, a victim of sexual assault). Investigators must also consider the Sexual Assault Investigations Policy with the use of the BWC.
3. Officer safety would be compromised due to an unexpected or sudden altercation.
4. While in a patient care area of a medical facility, hospital, sexual assault treatment center, or other health care facility where persons are receiving treatment, except when escorting an arrestee, anticipating an enforcement action related to a crime in progress, a criminal investigation, or an encounter with an uncooperative person in these areas.
5. During encounters with undercover officers/investigators or confidential informants.
6. For officer safety, when investigators are handling, reviewing, or discussing an operation plan, conducting undercover surveillance or discussing, developing, planning or engaging in investigative tactics or strategies during a pending investigation.
7. When an investigator reasonably believes there is no legitimate law enforcement purpose.

Bureau members should always remain mindful to protect personal, confidential, or sensitive information from being recorded during BWC usage.

418.4.4 CESSATION OF RECORDING

Once the BWC is activated, it shall remain on and shall not be turned off until the investigator has cleared their self from the contact or the incident has concluded. In any instance in which cessation of the recording prior to the conclusion of the contact or incident occurs, the reason for the termination of the recording shall be documented. Prior to any deactivation of the BWC, the investigator shall verbally note the date, time and reason for the deactivation on the recording itself.

In the event of an extended incident, investigators may deactivate the BWC to conserve recording time. In such cases, the investigator shall orally document the reason on the BWC prior to deactivation.

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Investigators shall cease recording whenever necessary to ensure conversations are not recorded between a person in custody and the person's attorney, religious advisor, or licensed physician, unless there is explicit consent from all parties (Penal Code § 636 and § 851.5 (b)(1)).

418.4.5 SLEEP MODE FUNCTION

Investigators may use the "Sleep Mode" function to temporarily disable recording. Use of this function shall be limited to exceptions listed in 2 through 7 of 438.4.3, Exceptions to Required Activation of the BWC.

418.4.6 INABILITY TO ACTIVATE THE BWC PRIOR TO INITIATING ENFORCEMENT OR INVESTIGATIVE ACTIVITY

If an investigator is unable to activate the BWC prior to initiating enforcement or investigative activities due to officer safety, public safety, or any other critical circumstance, the investigator shall activate the device as soon as it is safe and practicable to do so.

Investigators shall also document in a written report reasons why they failed to or were unable to activate the BWC, if a malfunction occurred, if the recording was terminated, or interrupted for any reason. Those reasons should be thoroughly narrated in details of the documentation.

An investigator who believed they activated the BWC, when in fact the BWC was not activated, shall not be subject to discipline if the belief was objectively reasonable.

If a written report results from an incident, the investigator shall document in the report the existence of their BWC recording and also shall document in their report whether or not they reviewed their BWC video prior to writing their report(s).

BWC recordings are not a replacement for written report(s).

418.4.7 CROWD CONTROL SCENARIOS / DEMONSTRATIONS

As a general policy, Bureau personnel should refrain from video recording or photographing peaceful demonstrations.

When there is reason to believe a planned event has the potential for unlawful activity, commanding or supervising investigators should make the determination whether visual recording or photographing is appropriate.

During demonstrations, investigators should operate cameras in buffering/stand-by mode. If investigators witness crimes occurring among the demonstrators, and/or believe an arrest is likely, they should begin recording in event mode.

418.4.8 EXPLOSIVE DEVICES

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Many portable recorders, including BWC and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present.

418.4.9 NON-UNIFORMED PERSONNEL BWC

Managers or investigators working administrative, non-uniformed or plain-clothes assignments issued a BWC, may wear the camera on the belt or above, in a forward facing position as an alternative to an audio-recording device for interviews or for use during deployment in the field, unless they are wearing body armor or a tactical vest, in which case the camera shall be mounted the same as uniformed personnel. All non-uniformed personnel, who have been issued a BWC, who are engaging in pre-planned enforcement activities such as serving a search or arrest warrant, or conducting/participating in parole /probation searches, shall utilize a BWC, unless the use of the BWC unreasonably compromises the identity of undercover investigators, jeopardizes tactics, or the investigator is assigned to an outside Multi-Agency Task Force. Investigators who have been issued a BWC and are not wearing a BWC during search/arrest warrants and parole/probation searches must have prior approval from a commander or higher.

418.4.10 ACCIDENTAL ACTIVATION OF THE BWC

An immediate supervisor should be notified as soon as possible following incidents of erroneous, accidental or inadvertent recordings of personal events and/or conversations with no evidentiary/business purpose. These events shall be tagged as accidental by the investigator. If the investigator requests the accidental recording be redacted or deleted, the commander of the Professional Standards Division shall review the recording and make a determination as to whether the recording was accidental.

1. If the commander determines the recording was accidental, with no evidentiary/business purpose, the recording shall be redacted within 30 business days from the date of the commander's determination. The redacted recording will be saved as a copy; the original recording and the redacted copy may be deleted (CPC § 832.18) unless deletion of the recording would violate the law. If deletion would not violate the law, both the redacted and original recording shall be deleted by the Bureau within 90 days. The investigator shall be notified of the commander's determination. A recording determined to be accidental by the commander, with no evidentiary/business purpose, shall not be shared with anyone absent a court order.
2. If the commander determines the recording was accidental, but a portion is of evidentiary /business purpose, the portion of the recording containing the personal event or conversation shall be redacted within 30 days from the date of the commander's determination, unless redaction of the recording would violate the law. The redacted recording will be saved as a copy; the original recording will be unaltered and retained in accord with record retention requirements. The investigator shall be notified of the commander's determination. The portion of the recording determined to be accidental by the commander, with no evidentiary/business purpose, shall not be shared with anyone absent a court order.

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If the commander determines the recording was not accidental, and/or shall not be deleted or redacted, the investigator may appeal that determination to the chief.

418.5 DOCUMENTATION AND STORAGE

418.5.1 LABELING RECORDED VIDEOS

Following a recorded event (see policy § 438.4.2), investigators shall assign the event the appropriate I. D., category, and title.

418.5.2 UPLOADING RECORDINGS

At the end of each shift, investigators who have been assigned a BWC shall dock their BWC device at an approved location to upload the audio/video files, unless otherwise approved by a supervisor. Any extension granted by a supervisor may not exceed four working days.

418.5.3 EVIDENCE PRESERVATION

Investigators are required to ensure that BWC recordings of evidentiary value are properly categorized in order to ensure the recording is retained for the necessary retention period.

418.5.4 BWC STORAGE MEDIA AS EVIDENCE

In exceptional circumstances and with the direction of a supervisor or above, the BWC itself may be booked into evidence prior to any uploading of media storage. Exceptional circumstances may include a major or significant incident or when data cannot be uploaded due to a mechanical or technological malfunction. If the BWC is booked into evidence, established booking procedures shall be followed and referenced in the report.

418.6 ADMINISTRATIVE AND RECORD KEEPING

418.6.1 BWC CUSTODIAN OF RECORDS

The commander of the Professional Standards Division, or their designee, shall be the Custodian of Records.

418.6.2 RETENTION OF RECORDINGS

Recordings of the following should be retained for a minimum of two years (Penal Code § 832.18):

1. Incidents involving use of force by an investigator(s).
2. Officer-involved shootings.
3. Incidents that lead to the detention or arrest of an individual.
4. Recordings relevant to a formal or informal complaint against an investigator or the Orange County District Attorney - Bureau of Investigation.

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Recordings containing evidence that may be relevant to a criminal prosecution should be retained for any additional period required by law for other evidence relevant to a criminal prosecution (Penal Code § 832.18).

All other recordings should be retained for a period consistent with the requirements of the organization's records retention schedule, but in no event for a period less than 180 days.

Records or logs of access and deletion of recordings should be retained permanently (Penal Code § 832.18).

418.6.3 RELEASE OF AUDIO/VIDEO RECORDINGS

Requests for the release of audio/video recordings shall be processed in accordance with Records Maintenance and Release Policy § 804.

418.6.4 BWC PROGRAM COORDINATOR

The Bureau shall designate a Body Worn Camera Coordinator in the Professional Standards Division to have program oversight including, but not limited to:

1. Documenting system malfunctions and equipment failures related to BWC.
2. Providing training to administrative and investigative staff regarding BWC use, media file retention, and confidentiality of video records.
3. Maintaining digital video files and equipment in a secure and confidential environment.
4. Ensuring media files are only released in accordance with Bureau Policy and applicable laws.
5. Coordinate issuance of BWC devices.
6. Provide training and instruction to BWC users on device usage and operation.
7. Provide Bureau management recommendations on policy development and equipment integrity.
8. Conduct periodic audits of BWC user procedure compliance (i.e., proper camera activation, deactivation, video tagging and categorization).

Chapter 5 - Traffic Operations

Chapter 6 - Investigation Operations

Investigation and Prosecution

600.1 PURPOSE AND SCOPE

The purpose of this policy is to set guidelines and requirements pertaining to the handling and disposition of criminal investigations.

600.2 POLICY

It is the policy of the Orange County District Attorney Bureau of Investigation to investigate crimes thoroughly, with due diligence, and to evaluate and prepare criminal cases for appropriate clearance or submission to a prosecutor.

600.3 POTENTIALLY EXCULPATORY EVIDENCE OR FACTS

Investigators must include in their reports adequate reference to all material evidence and facts which are reasonably believed to be exculpatory to any individual in the case. If an investigator learns of potentially exculpatory information anytime after submission of the case, the investigator must notify the prosecutor as soon as practicable.

Evidence or facts are considered material if there is a reasonable probability that they may impact the result of a criminal proceeding or trial. Determining whether evidence or facts are material often requires legal or even judicial review. Determining whether or not evidence or facts are material is not the responsibility of the investigator; therefore, the investigator shall submit all evidence to the assigned deputy district attorney for that determination.

600.4 PHOTOGRAPHIC IDENTIFICATION OF SUSPECTS

The employee presenting the lineup must take the utmost care not to communicate the identity of the suspect in any way.

The following precautions should be taken by any employee presenting a photographic lineup:

- a. The person of interest or suspect in the photo lineup should not stand out from the other persons depicted in the photos.
- b. At no time prior to, during or after the presentation of a photographic lineup should it be suggested to a witness that any person depicted in the lineup is a suspect or was in any way connected to the offense.
- c. The position of the suspect's photo and filler photos should be placed in a different random order for each witness.
- d. In order to avoid undue influence, witnesses viewing a photographic lineup should do so individually and outside the presence of other witnesses. Witnesses should be instructed to avoid discussing details of the incident or of the photographic lineup with other witnesses.

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- e. An admonishment should be given to each witness that the suspect's photograph may or may not be among those in the lineup and that the witness is not required to make an identification.

The procedure employed and the results of any photographic lineup should be documented in the case report. A copy of the photographic lineup presented to the witness should be included in the case report. Witness comments of how certain he/she is of the identification or non-identification should be quoted in the appropriate report.

600.5 CUSTODIAL INTERROGATION REQUIREMENTS

Suspects who are in custody and subjected to an interrogation shall be given the *Miranda* warning, unless an exception applies. Interview or interrogation of a juvenile shall be in accordance with the Temporary Custody of Juveniles Policy § 309.

600.5.1 AUDIO/VIDEO RECORDINGS

Any custodial interrogation of an individual who is suspected of having committed any violent felony offense should be recorded (audio or video with audio as available) in its entirety. Regardless of where the interrogation occurs, every reasonable effort should be made to secure functional recording equipment to accomplish such recordings.

Consideration should also be given to recording a custodial interrogation, or any investigative interview, for any other offense when it is reasonable to believe it would be appropriate and beneficial to the investigation and is otherwise allowed by law.

No recording of a custodial interrogation should be destroyed or altered without written authorization from the prosecuting attorney and the Bureau of Investigation supervisor. Copies of recorded interrogations or interviews may be made in the same or a different format as the original recording, provided the copies are true, accurate and complete and are made only for authorized and legitimate law enforcement purposes.

Recordings should not take the place of a thorough report and investigative interviews. Written statements from suspects should continue to be obtained when applicable.

Refer to Portable Audio/Video Recorders § 413.7 for information on reviewing recordings.

600.5.2 MANDATORY RECORDING OF ADULTS

Any custodial interrogation of an adult who is suspected of having committed any murder shall be recorded in its entirety. The recording should be video with audio if reasonably feasible (Penal Code § 859.5).

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

- a. Recording is not feasible because of exigent circumstances that are later documented in a report.

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

The Bureau shall maintain an original or an exact copy of the recording until a conviction relating to the interrogation is final and all appeals are exhausted or prosecution is barred by law (Penal Code § 859.5).

600.6 INITIAL INVESTIGATION

600.6.1 INVESTIGATOR RESPONSIBILITIES

An investigator responsible for an initial investigation shall complete no less than the following:

- 1. Make a preliminary determination of whether a crime has been committed by completing, at a minimum:
 - 1. An initial statement from any witnesses or complainants.
 - 2. A cursory examination for evidence.
- 2. If information indicates a crime has occurred, the investigator shall:
 - 1. Preserve the scene and any evidence as required to complete the initial and follow-up investigation.
 - 2. Determine if additional investigative resources (e.g., investigators or scene processing) are necessary and request assistance as required.
 - 3. If assistance is warranted, or if the incident is not routine, notify a supervisor or the Division commander.
 - 4. Make reasonable attempts to locate, identify and interview all available victims, complainants, witnesses and suspects.
 - 5. Collect any evidence.

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6. Take any appropriate law enforcement action.
7. Complete and submit the appropriate reports and documentation.
3. If the preliminary determination is that no crime occurred, determine what other action may be necessary, what other resources may be available, and advise the informant or complainant of this information.

600.6.2 NON-SWORN MEMBER RESPONSIBILITIES

An investigative assistant assigned to any preliminary investigation is responsible for all investigative steps, except making any attempt to locate, contact or interview a suspect face-to-face or take any enforcement action, search warrants or photographic line ups. Should an initial investigation indicate any of the aforementioned steps are required, the assistance of an investigator shall be requested.

A Civilian Economics Crime Investigator assigned to any preliminary investigation is responsible for all investigative steps, except arresting and/or controlling suspects and executing a search warrant.

600.7 DISCONTINUATION OF INVESTIGATIONS

The investigation of a criminal case or efforts to seek prosecution should only be discontinued if one of the following applies:

1. All reasonable investigative efforts have been exhausted, no reasonable belief that the person who committed the crime can be identified, and the incident has been documented appropriately.
2. The perpetrator of a misdemeanor has been identified and a warning is the most appropriate disposition.
 1. In these cases, the investigator shall document that the person was warned and why prosecution was not sought.
 2. Warnings shall not be given for felony offenses or other offenses identified in this policy or by law that require an arrest or submission of a case to a prosecutor.
3. The case has been submitted to the appropriate prosecutor but no charges have been filed. Further investigation is not reasonable nor has the prosecutor requested further investigation.
4. The case has been submitted to the appropriate prosecutor, charges have been filed, and further investigation is not reasonable, warranted or requested, and there is no need to take the suspect into custody.
5. Suspects have been arrested, there are no other suspects, and further investigation is either not warranted or requested.
6. Investigation has proven that a crime was not committed.

600.8 COMPUTERS AND DIGITAL EVIDENCE

The collection, preservation, transportation and storage of computers, cell phones and other digital devices may require specialized handling to preserve the value of the related evidence. If it is anticipated that computers or similar equipment will be seized, investigators should request that computer forensic

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examiners assist with seizing computers and related evidence. If a forensic examiner is unavailable, investigators should take reasonable steps to prepare for such seizure and use the resources that are available.

For more information refer to Property and Evidence § 801.

600.9 INVESTIGATIVE USE OF SOCIAL MEDIA AND INTERNET SOURCES

Use of social media and any other Internet source to access information for the purpose of criminal investigation shall comply with applicable laws and policies regarding privacy, civil rights and civil liberties. Information gathered via the Internet should only be accessed by members while on-duty and for purposes related to the mission of this Bureau. If a member encounters information relevant to a criminal investigation while off-duty or while using his/her own equipment, the member should note the dates, times and locations of the information and report the discovery to his/her supervisor as soon as practicable. The member, or others who have been assigned to do so, should attempt to replicate the finding when on-duty and using Bureau equipment.

Information obtained via the Internet should not be archived or stored in any manner other than Bureau-established record keeping systems.

600.9.1 ACCESS RESTRICTIONS

Information that can be accessed from any Bureau computer, without the need of an account, password, email address, alias or other identifier (unrestricted websites), may be accessed and used for legitimate investigative purposes without supervisory approval.

Accessing information from any internet source that requires the use or creation of an account, password, email address, alias or other identifier, or the use of nongovernment IP addresses, requires supervisor approval prior to access. The supervisor will review the justification for accessing the information and consult with legal counsel as necessary to identify any policy or legal restrictions. Any such access and the supervisor approval shall be documented in the related investigative report.

Accessing information that requires the use of a third party's account or online identifier requires supervisor approval and the consent of the third party. The consent must be voluntary and shall be documented in the related investigative report.

Information gathered from any internet source should be evaluated for its validity, authenticity, accuracy and reliability. Corroborative evidence should be sought and documented in the related investigative report.

Any information collected in furtherance of an investigation through an internet source should be documented in the related report. Documentation should include the source of information and the dates and times that the information was gathered.

600.9.2 INTERCEPTING ELECTRONIC COMMUNICATION

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Intercepting social media communications in real time may be subject to federal and state wiretap laws. Investigators should seek legal counsel before any such interception.

600.10 USE OF CERTAIN DNA SAMPLES

Known samples of DNA collected from a victim of a crime or alleged crime, and known reference samples of DNA from any individual that were voluntarily provided for the purpose of exclusion are to be used only for the purpose directly related to the incident being investigated and in compliance with the procedures identified in Penal Code § 679.12.

600.11 STATE REQUIREMENTS FOR FIREARM INVESTIGATIONS

600.11.1 CALIFORNIA DOJ NOTICE OF LOCATION OF REPORTED LOST OR STOLEN FIREARM

When notification is received from the California Department of Justice (DOJ) that a firearm purchase matches an entry made into the Automated Firearms System by the Bureau as lost or stolen, the Bureau of Investigation supervisor shall assign an investigator to retrieve the firearm and book the firearm into evidence in accordance with the Property and Evidence Policy. Recovery of the firearm shall be reported pursuant to Penal Code § 11108.2, Penal Code §11108.3, and Penal Code § 11108.5. If appropriate, arrangements may be made to have another state or local law enforcement agency retrieve the firearm on behalf of the Bureau (Penal Code § 28220).

600.11.2 RELINQUISHMENT OF FIREARMS VERIFICATION

The Professional Standards Division supervisor shall designate a member to have access to the Armed Prohibited Persons System (APPS) to receive information regarding individuals in the jurisdiction of the Bureau who have become a prohibited possessor of a firearm registered in their name and have not provided proof of relinquishment. The member shall document steps taken to verify that the individual is no longer in possession of firearms and provide the information to the Records Bureau for preparation of a quarterly report to the California DOJ (Penal Code § 29813) (see the Records Bureau Policy for additional guidance).

Informants

601.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the use of informants.

601.1.1 DEFINITIONS

Definitions related to this policy include:

Informant - A person who covertly interacts with other individuals or suspects at the direction of, request of, or by agreement with the Orange County District Attorney Bureau of Investigation for law enforcement purposes. This also includes a person agreeing to supply information to the Orange County District Attorney for a benefit (e.g., a quid pro quo in the form of a reduced criminal penalty, money).

601.2 POLICY

The Orange County District Attorney Bureau of Investigation recognizes the value of informants to law enforcement efforts and will strive to protect the integrity of the informant process. It is the policy of this Bureau that all funds related to informant payments will be routinely audited and that payments to informants will be made according to the criteria outlined in this policy.

601.3 USE OF INFORMANTS

601.3.1 INITIAL APPROVAL

Before using an individual as an informant, an investigator must receive approval from his/her supervisor. The investigator shall compile sufficient information through a background investigation and experience with the informant in order to determine the suitability of the individual, including age, maturity and risk of physical harm, as well as any indicators of his/her reliability and credibility. The investigator should then complete an OCII information card and submit to the OCII coordinator for review. If the OCII coordinator approves the request, it will be forwarded to investigative management to determine whether or not use of the individual informant is appropriate. Until final approval has been granted from investigative management, no contact should be made with the informant unless previously authorized by the OCII coordinator or investigative management.

Members of this Bureau should not guarantee absolute safety or confidentiality to an informant.

601.3.2 JUVENILE INFORMANTS

No minor shall be utilized as an informant except in compliance with Penal Code § 701.5. In addition, it is the policy of the Orange County District Attorney's Office that no minor shall be used as an informant, as herein defined, without the prior *written* approval of the law enforcement agency's Chief and the elected District Attorney.

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601.3.3 INFORMANT AGREEMENTS

All informants are required to sign and abide by the provisions of the designated Bureau informant agreement. The investigator using the informant shall discuss each of the provisions of the agreement with the informant.

Details of the agreement are to be approved in writing by a supervisor before being finalized with the informant.

601.4 INFORMANT INTEGRITY

To maintain the integrity of the informant process, the following must be adhered to:

1. The identity of an informant acting in a confidential capacity shall not be withheld from the Bureau Chief, Assistant Chief or their authorized designees.
 1. Identities of informants acting in a confidential capacity shall otherwise be kept confidential.
2. Criminal activity by informants shall not be condoned.
3. Informants shall be told they are not acting as Bureau investigators, employees or agents of the Orange County District Attorney, and that they shall not represent themselves as such.
4. The relationship between Bureau members and informants shall always be ethical and professional.
 1. Members shall not initiate, respond to or engage in personal relationships with an informant or engage or participate in any activity whatsoever that is sexual in nature in any instance or any occasion.
 2. Social contact shall be avoided unless it is necessary to conduct an official investigation, and only with prior approval of a supervisor.
 3. Members shall neither solicit nor accept gratuities or engage in any private business transaction with an informant.
5. Investigators shall take a second investigator to all meetings with any informant, unless they have prior approval from their supervisor. Supervisors should be able to explain why they approved single investigator meetings with informants.
6. When contacting informants for the purpose of making payments, investigators shall take another investigator, who will witness the payment to the informant.
7. In all instances when Bureau funds are paid to informants, a voucher shall be completed in advance, itemizing the expenses. This includes but is not limited to items such as food, gas, pre-paid purchases, etc.
8. Since the decision rests with the appropriate prosecutor, investigators shall not promise that the informant will receive any form of leniency or immunity from criminal prosecution.

601.4.1 UNSUITABLE INFORMANTS

The suitability of any informant should be considered before engaging him/her in any way in a covert or other investigative process. Members who become aware that an informant may be unsuitable will notify the supervisor and OCII coordinator, who will initiate a review to determine suitability. Until a determination has been made by a supervisor or OCII coordinator, the informant should not be used by

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any member. The supervisor or OCII coordinator shall determine whether the informant should be used by the Bureau and, if so, what conditions will be placed on his/her participation or any information the informant provides. The supervisor shall document the decision and conditions in file notes and mark the file “unsuitable” when appropriate.

Considerations for determining whether an informant is unsuitable include, but are not limited to, the following:

- a. The informant has provided untruthful or unreliable information in the past.
- b. The informant behaves in a way that may endanger the safety of an investigator.
- c. The informant reveals to suspects the identity of an investigator or the existence of an investigation.
- d. The informant appears to be using his/her affiliation with this Bureau to further criminal objectives.
- e. The informant creates officer-safety issues by providing information to multiple law enforcement agencies simultaneously, without prior notification and approval of each agency.
- f. The informant engages in any other behavior that could jeopardize the safety of investigators or the integrity of a criminal investigation.
- g. The informant commits criminal acts subsequent to entering into an informant agreement.
- h. Disagreements about the unsuitability of an informant, between the OCII Coordinator and investigative staff, should be adjudicated by investigative management.

601.5 INFORMANT FILES

Informant files shall be utilized as a source of background information about the informant, to enable review and evaluation of information provided by the informant, and to minimize incidents that could be used to question the integrity of Bureau members or the reliability of the informant.

Informant files shall be maintained in a secure area within the NET. The NET supervisor or the authorized designee shall be responsible for maintaining informant files. Access to the informant files shall be restricted to the Bureau Chief, Assistant Chief or their authorized designees.

The Vertical Prosecution 1 Commander should arrange for an audit using a representative sample of randomly selected informant files on a periodic basis, but no less than one time per year. If the NET supervisor is replaced, the files will be audited before the new supervisor takes over management of the files. The purpose of the audit is to ensure compliance with file content and updating provisions of this policy. The audit should be conducted by a supervisor who does not have normal access to the informant files.

601.5.1 FILE SYSTEM PROCEDURE

- a. A separate file shall be maintained on each informant and shall be coded with an assigned informant control number. An informant history that includes the following information shall be prepared for each file:
 - b. Name and aliases
 - c. Date of birth

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- d. Physical description: sex, race, height, weight, hair color, eye color, scars, tattoos or other distinguishing features
- e. Photograph
- f. Current home address and telephone numbers
- g. Current employers, positions, addresses and telephone numbers
- h. Vehicles owned and registration information
- i. Places frequented
- j. Briefs of information provided by the informant and his/her subsequent reliability
 - 1. If an informant is determined to be unsuitable, the informant's file is to be marked "unsuitable" and notations included detailing the issues that caused this classification.
- k. Name of all investigators and/or prosecutors using the informant
- l. Signed informant agreement
- m. Update on active or inactive status of informant

601.6 INFORMANT PAYMENTS

No informant will be told in advance or given an exact amount or percentage for his/her service, unless agreed upon by the Bureau Chief or the District Attorney or his designee. The amount of funds to be paid to any informant will be evaluated against the following criteria:

- The extent of the informant's personal involvement in the case
- The significance, value or effect on crime
- The value of assets seized
- The quantity of the drugs or other contraband seized
- The informant's previous criminal activity
- The level of risk taken by the informant

The NET supervisor will discuss the above factors with the Division commander and recommend the type and level of payment subject to approval by the Bureau Chief.

601.6.1 PAYMENT PROCESS

Approved payments to an informant should be in cash using the following process:

1. Payments of \$500 and under may be paid in cash from a special fund.
 1. The NET supervisor shall sign the voucher for cash payouts from the buy/expense fund.
2. Payments exceeding \$500 shall be made by issuance of a check, payable to the investigator who will be delivering the payment.
 1. The check shall list the case numbers related to and supporting the payment.
 2. A written statement of the informant's involvement in the case shall be placed in the informant's file.
 3. The statement shall be signed by the informant verifying the statement as a true summary of his/her actions in the case.

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4. Authorization signatures from the Bureau Chief and the County Executive are required for disbursement of the funds.
3. To complete the payment process for any amount, the investigator delivering the payment shall complete a cash transfer form.
 1. The cash transfer form shall include the following:
 - a. Date
 - b. Payment amount
 - c. Orange County District Attorney case number
 - d. A statement that the informant is receiving funds in payment for information voluntarily rendered.
 2. The cash transfer form shall be signed by the informant.
 3. The cash transfer form will be kept in the informant's file.

601.6.2 REPORTING OF PAYMENTS

Each informant receiving a cash payment shall be advised of his/her responsibility to report the cash to the Internal Revenue Service (IRS) as income. If funds distributed exceed \$600 in any reporting year, the informant should be provided IRS Form 1099 (26 CFR 1.6041-1). If such documentation or reporting may reveal the identity of the informant and by doing so jeopardize any investigation, the safety of investigators or the safety of the informant (26 CFR 1.6041-3), then IRS Form 1099 should not be issued.

In such cases, the informant shall be provided a letter identifying the amount he/she must report on a tax return as "other income" and shall be required to provide a signed acknowledgement of receipt of the letter. The completed acknowledgement form and a copy of the letter shall be retained in the informant's file.

601.6.3 AUDIT OF PAYMENTS

The NET supervisor or the authorized designee shall be responsible for compliance with any audit requirements associated with grant provisions and applicable state and federal law.

At least once every six months, the Bureau Chief or the authorized designee should conduct an audit of all informant funds for the purpose of accountability and security of the funds. The funds and related documents (e.g., buy/expense fund records, cash transfer forms, invoices, receipts and logs) will assist with the audit process.

601.7 INFORMANT INTERVIEW

601.7.1 PURPOSE AND SCOPE FOR INTERVIEW

Police officers and investigators are constantly under close scrutiny regarding conduct with informants and witnesses. As a matter of general procedure, all investigators shall take a second investigator to all meetings to contact / interview any informant, unless they have prior approval from their supervisor.

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601.7.2 PROCEDURE

Investigators should be cognizant of the need to be prepared to testify in court and corroborate an informant's statement and contact information. To corroborate any information or statements received from the informant or a questionable witness, it is preferable to audio or video record the informant's contact/interview, if possible. For information regarding recordings, refer to § 413. A written record of the contact/interview should be completed by the investigator. Exceptions may be approved by the supervisor.

This policy does not preclude the day to day, "one on one" witness contact that is necessary to perform more routine duties, but is intended to cover the more difficult or unusual situations.

Asset Forfeiture Policy

602.1 PURPOSE AND SCOPE

This policy describes the authority and procedure for the seizure & liquidation of assets associated with specified controlled substances. This policy applies to forfeited or seized assets in the form of currency, real estate, automobiles, boats, aircraft, or any other items of value.

602.2 ASSET SEIZURE AUTHORITY

California Health & Safety Code § 11470 provides for the forfeiture of any currency, real and/or personal property, which represents proceeds or was used to facilitate narcotic activity in violation of the California Health & Safety Code. The offense(s) must involve the manufacturing, distribution, transportation for sale, sales, possession for sale, offer for sale, offer to manufacture, or the conspiracy to commit certain California Health & Safety Code violations.

California Health and Safety Code § 11488a specifies that any peace officer having probable cause, may seize all moneys, negotiable instruments, securities, vehicles, boats, airplanes or other things of value which are forfeitable pursuant to California Health and Safety Code of §11470 (a) to (f).

602.2.1 MINIMUM GUIDELINES

The following guidelines identify the minimum amounts or values required to seize currency, real and/or personal property, pursuant to California Health & Safety Code § 11470:

- \$500.00 or more in currency or other negotiable instruments that are proceeds of narcotic activity.
- Vehicles, i.e. cars, trucks, motorcycles, boats, or airplanes used as a conveyance, with a low blue book value of \$3,000.00 or more. (See special guidelines in § 603.2.2 below).
- Other assets or real estate: Contact the Asset Forfeiture coordinator.

602.2.2 SPECIAL GUIDELINES APPLICABLE TO AUTOMOBILES

Special guidelines apply regarding the minimum amounts of controlled substances contained in a vehicle in order for it to be seized as a conveyance used to facilitate narcotic activity. The minimum amounts of a controlled substance within a vehicle are as follows:

- a. 14.25 grams (1/2 ounce) or more of heroin or cocaine base
- b. A substance containing 14.25 grams or more of heroin or cocaine base
- c. 14.25 grams or more of a substance containing heroin or cocaine base
- d. 28.5 grams (1 ounce) or more of Schedule I controlled substances except marijuana, peyote or psilocybin
- e. 10 pounds dry weight or more of marijuana, peyote or psilocybin
- f. 28.5 grams or more of cocaine or methamphetamine
- g. A substance containing 28.5 grams or more of cocaine or methamphetamine

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- h. 57 grams (2 ounces) or more of a substance containing cocaine or methamphetamine
- i. 28.5 grams or more of a Schedule II controlled substance

602.3 ASSET FORFEITURE PROCEDURE

Before seizing any currency, vehicle, or personal property pursuant to California Health & Safety Code § 11470, an investigator should contact the D.A. Legal Staff. The following guidelines will be observed:

- a. The seizing investigator or the detective will serve all persons with Notice of Seizure and Intended Forfeiture that includes an attached County of Origin Claim Form Opposing Forfeiture and a forfeiture receipt. Disclaimers (English/Spanish) will be completed on all persons disclaiming ownership of currency, vehicle, or property seized.
- b. When someone has made notification other than the Asset Forfeiture coordinator, a copy of all reports and all applicable asset forfeiture paperwork must be forwarded to the legal staff, for review.
- c. Interview all persons involved concerning their possession of the seized assets, financial situation, employment, income, and other resources. If a defendant has not given a Miranda waiver before an interview regarding assets, the investigator will conduct a further criminal interview as necessary.
- d. Attempt to promptly determine all lienholders or all persons who may have a legal interest in the seized currency, vehicle or property for further contact, investigation and notification.
- e. The seizure of assets subject to forfeiture is a civil proceeding, filed through the county of origin, Office of the District Attorney Forfeiture Unit coordinator.

602.3.1 SEIZED PROPERTY

Property seized subject to forfeiture, will be inventoried and booked into property. The property will be checked through the Automated Property System to determine if the property has been stolen.

The property will be booked as evidence, with the notation in the comment section of the property form, "Seized Subject to Forfeiture." Property seized subject to forfeiture should be booked on a separate property form; no other evidence from the case should be booked on this form.

602.3.2 SEIZED CURRENCY

Currency seized subject to forfeiture will be counted by the seizing investigator and a supervisor. The currency will be placed in a money envelope with the denomination of the currency, totals of each denomination and total amount of currency enclosed noted on the money envelope. The investigator counting, and supervisor verifying, will initial and sign the money envelope when sealed. If the currency will not fit into a standard money envelope, place the currency in a larger envelope or bag, sealing and affixing a completed money envelope to the outside of the larger envelope or bag which contains the currency.

Currency seized will be given to and retained by a supervisor, for deposit into the Orange County District Attorney's Office Investigation Litigation Trust Fund. If there is a need to book the currency into the Bureau of Investigation property safe, the currency will be booked on a single Property form notating "subject to asset forfeiture" in the comments section of the Property Form. The seizing investigator shall

Asset Forfeiture Policy

notify their commander of the currency booked into property and circumstances of the seizure, as soon as possible.

602.3.3 SEIZED VEHICLES

Vehicles seized subject to forfeiture will be taken to a designated secure storage facility. A seized vehicle should not be impounded. The investigator seizing the vehicle shall notify his/her supervisor of the seizure of the vehicle and circumstances of the seizure, as soon as possible.

If the vehicle cannot be driven, a tow truck will be used to tow the vehicle to the storage facility.

Personal property located in a seized vehicle shall be removed and booked into Property as either evidence or for safekeeping.

602.4 ASSET FORFEITURE LOG

A computerized inventory of all asset forfeiture cases shall be kept by the Legal Staff. The inventory shall include the following:

- Case number
- Date of seizure
- Value
- Type of Seizure (Federal or State)
- Status of the seizure

Information maintained in the computer will be provided to the Bureau Chief or authorized Staff, as requested.

602.5 PROCEEDS FROM FORFEITURE

Equitable shares received from seized assets shall be maintained in separate funds and shall be subject to accounting controls and annual financial audits.

Eyewitness Identification

603.1 PURPOSE AND SCOPE

This policy sets forth guidelines to be used when members of this Bureau employ eyewitness identification techniques (Penal Code § 859.7).

603.1.1 DEFINITIONS

Definitions related to the policy include:

Blind Administration / Administrator - An administrator of an eyewitness identification procedure who does not know the identity of the suspect.

Eyewitness - A person whose identification of another person may be relevant in a criminal investigation.

Eyewitness identification process - Any field show up identification, live lineup or photographic identification.

Field identification - A live presentation of a single individual to a witness following the commission of a criminal offense for the purpose of identifying or eliminating the person as the suspect.

Investigator - The person conducting the identification procedure who may be familiar with the suspect. The investigator is not the blind administrator.

Live lineup - A procedure in which a group of persons, including the person suspected as the perpetrator of an offense and other persons not suspected of the offense, are displayed to an eyewitness for the purpose of determining whether the eyewitness is able to identify the suspect as the perpetrator..

Photographic lineup - A procedure in which an array of photographs, including a photograph of the person suspected as the perpetrator of an offense and additional photographs of other persons not suspected of the offense, are displayed to an eyewitness for the purpose of determining whether the eyewitness is able to identify the suspect as the perpetrator..

603.2 POLICY

The Orange County District Attorney Bureau of Investigation will strive to use eyewitness identification techniques, when appropriate, to enhance the investigative process and will emphasize identifying persons responsible for crime and exonerating the innocent. If an investigator chooses to utilize an eyewitness identification technique, the investigator conducting the identification procedure shall use blind administration during the identification procedure.

603.3 INTERPRETIVE SERVICES

Eyewitness Identification

Members should make a reasonable effort to arrange for an interpreter before proceeding with eyewitness identification if communication with a witness is impeded due to language or hearing barriers.

Before the interpreter is permitted to discuss any matter with the witness, the investigating member should explain the identification process to the interpreter. Once it is determined that the interpreter comprehends the process and can explain it to the witness, the eyewitness identification may proceed as provided for within this policy.

603.4 EYEWITNESS IDENTIFICATION PROCESS AND FORM

The Professional Standards Division shall be responsible for the development and maintenance of an eyewitness identification process for use by members when they are conducting eyewitness identifications.

The process should include appropriate forms or reports that provide:

- a. The date, time and location of the eyewitness identification procedure.
- b. The name and identifying information of the witness.
- c. The name of the person administering the identification procedure.
- d. If applicable, the names of all of the individuals present during the identification procedure.
- e. An instruction to the witness that it is as important to exclude innocent persons as it is to identify a perpetrator.
- f. If the identification process is a photographic or live lineup, an instruction to the witness that the perpetrator may not appear exactly as he/she did on the date of the incident.
- g. A signature line where the witness acknowledges that he/she understands the identification procedures and instructions.
- h. Any other direction to meet the requirements of Penal Code § 859.7, including direction regarding blind or blinded administrations and filler selection.

The process shall include the following:

- a. An instruction to the witness that the perpetrator may or may not be among those presented and that the witness is not obligated to make an identification.
- b. An instruction to the witness that the investigation will continue regardless of whether an identification is made by the witness.
- c. A statement from the witness in the witness's own words describing how certain he/she is of the identification or non-identification. This statement should be taken at the time of the identification procedure.

The process and related forms should be reviewed at least annually and modified when necessary.

Photographic line-ups can be found on the [Bureau web](#), available in English, Spanish and Vietnamese.

603.5 EYEWITNESS IDENTIFICATION

Eyewitness Identification

Members are cautioned not to, in any way, influence a witness as to whether any subject or photo presented in a lineup is in any way connected to the case.

Members should avoid mentioning that:

- The individual was apprehended near the crime scene.
- The evidence points to the individual as the suspect.
- Other witnesses have identified or failed to identify the individual as the suspect.

In order to avoid undue influence, witnesses shall view suspects or a lineup individually and outside the presence of other witnesses. Witnesses should be instructed to avoid discussing details of the incident or of the identification process with other witnesses.

The eyewitness identification procedure shall be audio and video recorded and the recording should be retained according to current evidence procedures. When it is not feasible to make a recording with both audio and visual representations, an audio recording should be made (Penal Code § 859.7).

603.6 DOCUMENTATION

A thorough description of the eyewitness process and the results of any eyewitness identification should be documented in the case report.

If a photographic lineup is utilized, a copy of the photographic lineup presented to the witness should be included in the case report. In addition, the order in which the photographs were presented to the witness should be documented in the case report.

603.6.1 DOCUMENTATION RELATED TO RECORDINGS

The handling member shall document, in writing, the reason that a video recording or any other recording of an identification was not obtained (Penal Code § 859.7).

603.6.2 DOCUMENTATION RELATED TO BLIND ADMINISTRATION

If a presentation of a lineup is not conducted using blind administration, the handling member shall document the reason in writing (Penal Code § 859.7).

603.7 PHOTOGRAPHIC LINEUP AND LIVE LINEUP CONSIDERATIONS

When practicable, the member presenting the lineup should not be involved in the investigation of the case or know the identity of the suspect. In no case shall the member presenting a lineup to a witness know which photograph or person in the lineup is being viewed by the witness (Penal Code § 859.7). Techniques to achieve this include randomly numbering photographs, shuffling folders, or using a computer program to order the persons in the lineup.

Individuals in the lineup shall reasonably match the description of the perpetrator provided by the witness and should bear similar characteristics to avoid causing any person to unreasonably stand out. In cases

Eyewitness Identification

involving multiple suspects, a separate lineup shall be conducted for each suspect (Penal Code § 859.7). The suspects should be placed in a different order within each lineup.

The member presenting the lineup should do so sequentially (i.e., show the witness one person at a time) and not simultaneously. The witness should view all persons in the lineup.

A live lineup shall only be used before criminal proceedings have been initiated against the suspect. If there is any question as to whether any criminal proceedings have begun, the investigating member should contact the appropriate prosecuting attorney before proceeding.

603.7.1 OTHER SAFEGUARDS

Witnesses shall be asked for suspect descriptions as close in time to the incident as possible and before conducting an eyewitness identification. No information concerning a suspect shall be given prior to obtaining a statement from the witness describing how certain he/she is of the identification or non-identification. Members shall not say anything to a witness that may validate or invalidate an eyewitness' identification. In photographic lineups, writings or information concerning any previous arrest of a suspect shall not be visible to the witness (Penal Code § 859.7).

603.8 FIELD IDENTIFICATION CONSIDERATIONS

Field identifications, also known as field elimination show-ups or one-on-one identifications, may be helpful in certain cases, where exigent circumstances make it impracticable to conduct a photo or live lineup identifications. A field elimination show-up or one-on-one identification should not be used when independent probable cause exists to arrest a suspect. In such cases a live or photo lineup is the preferred course of action if eyewitness identification is contemplated.

When initiating a field identification, the member should observe the following guidelines:

1. Obtain a complete description of the suspect from the witness.
2. Assess whether a witness should be included in a field identification process by considering:
 1. The length of time the witness observed the suspect.
 2. The distance between the witness and the suspect.
 3. Whether the witness could view the suspect's face.
 4. The quality of the lighting when the suspect was observed by the witness.
 5. Whether there were distracting noises or activity during the observation.
 6. Any other circumstances affecting the witness's opportunity to observe the suspect.
 7. The length of time that has elapsed since the witness observed the suspect.
3. If safe and practicable, the person who is the subject of the show-up should not be handcuffed or in a patrol vehicle.
4. When feasible, members should bring the witness to the location of the subject of the show-up, rather than bring the subject of the show-up to the witness.
5. The person who is the subject of the show-up should not be shown to the same witness more than once.

Eyewitness Identification

6. In cases involving multiple suspects, witnesses should only be permitted to view the subjects of the show-up one at a time.
7. The person who is the subject of the show-up should not be required to put on clothing worn by the suspect, to speak words uttered by the suspect or to perform other actions mimicking those of the suspect.
8. If a witness positively identifies a subject of the show-up as the suspect, members should not conduct any further field identifications with other witnesses for that suspect. In such instances members should document the contact information for any additional witnesses for follow up, if necessary.

U Visa Certification Policy

606.1 PURPOSE AND SCOPE

In 2000, Congress created the U Visa with the passage of the Victims of Trafficking and Violence Protection Act (including the Battered Women's Protection Act). The purpose was to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes, while also protecting victims of crimes who have suffered substantial mental or physical abuse and are willing to help law enforcement authorities in the investigation and prosecution of the criminal offense.

This policy addresses the eligibility and application requirements for U Visas, as well as any discovery obligations arising out of U Visa requests.

606.2 U VISA NONIMMIGRANT STATUS

Under certain circumstances, federal law allows temporary immigration benefits, known as a U Visa, to victims and witnesses of certain qualifying crimes (8 USC § 1101(a)(15)(U)). A law enforcement certification for a U Visa, [USCIS Form I-918 Supplement B](#), may be completed by an investigator in order for a U Visa to be issued.

Any request for assistance in applying for U Visa status should be forwarded in a timely manner to the designated deputy district attorney to oversee the handling of any related case.

606.2.1 TIME FRAMES FOR COMPLETION

Investigators and the designated deputy district attorney shall complete the above process and the documents needed for a U Visa application pursuant to Penal Code § 679.10 and Penal Code § 679.11 within 90 days of a request from the victim or victim's family related to one of their assigned cases. If the victim is in removal proceedings, the certification process shall be processed within 14 days of the request.

606.3 ELIGIBILITY

To be eligible for U Visa certification, an applicant must fulfill the following six requirements:

1. The applicant must have been the victim of one of the following qualifying criminal activities:
 - a. Abduction, Hostage, Rape, Abusive Sexual Contact, Incest, Sexual Assault, Blackmail, Involuntary Servitude, Sexual Exploitation, Domestic Violence, Kidnapping, Slave Trade, Extortion, Manslaughter, Stalking, False Imprisonment, Murder, Torture, Female Genital Mutilation, Obstruction of Justice, Trafficking, Felonious Assault, Peonage, Witness Tampering, Fraud in Foreign Labor Contracting, Perjury, Unlawful Criminal Restraint, Prostitution, or other related crimes.
2. The applicant must have suffered substantial physical or mental abuse as a result of having been a victim of criminal activity;

U Visa Certification Policy

3. The applicant must have information concerning the criminal activity;
4. The applicant must have been helpful, is helpful, or is likely to be helpful to law enforcement in the investigation or prosecution of the crime;
 - a. If the applicant is under the age of 16, or unable to provide information due to a disability, a parent, guardian, or next of kin may assist law enforcement on his or her behalf;
5. The crime occurred in the United States or violated U.S. immigration laws; and
6. The applicant is admissible to the United States under current U.S. immigration laws and regulations.

Please note that fulfilling these six requirements does not automatically result in U Visa relief.

606.3.1 ELIGIBILITY OF FAMILY MEMBERS

Certain family members are eligible for a derivative U Visa based on their relationship to the applicant. If the applicant is under 21 years of age, he or she may petition on behalf of his or her spouse, children, parents and unmarried siblings under the age of 18. If the applicant is 21 years of age or older, he or she may petition on behalf of his or her spouse and children.

606.4 DISCOVERY OBLIGATIONS

The fact that a witness is seeking or expects an immigration-related benefit in exchange for being "helpful to law enforcement in the investigation or prosecution of the crime" is evidence that may be used to impeach that witness's credibility because it has a tendency to show motive and/or bias. Under *Brady v. Maryland* (1963) 373 U.S. 83, prosecutors have an affirmative, due process obligation to disclose favorable, material evidence to the defense. Evidence that undermines the credibility of a prosecution witness, is favorable evidence. While our office is not involved in the decision of whether or not a victim actually obtains relief, our signing of the U Visa request allows a cooperative victim to apply for relief. Thus, if a request for U Visa certification is made while a case is pending, that information must be disclosed to the defense.

Brady Material Disclosure

607.1 PURPOSE AND SCOPE

This policy establishes guidelines for identifying and releasing potentially favorable/impeachment information (so-called “Brady information”) to a prosecuting attorney.

Nothing in this policy is intended to alter or replace the OCDA's constitutional discovery obligations as mandated by *Brady v. Maryland* (1963) 373 U.S. 83 and its progeny.

607.1.1 DEFINITIONS

Definitions related to this policy include:

Brady Information - Information known or possessed to be potential Brady material by the Orange County District Attorney that is both favorable and material to the current prosecution or defense of a criminal defendant.

607.2 POLICY

The Orange County District Attorney Bureau of Investigation will conduct fair and impartial criminal investigations and will provide the prosecution with both incriminating and exculpatory evidence, as well as information that may adversely affect the credibility of a witness. In addition to reporting all evidence of guilt, the Orange County District Attorney Bureau of Investigation will assist the prosecution by complying with its obligation to disclose information that is both favorable and material to the defense. The Bureau will identify and disclose to the prosecution potentially exculpatory and/or favorable information, as provided in this policy.

607.3 DISCLOSURE OF INVESTIGATIVE INFORMATION

Bureau members must include, to the best of their knowledge, in their investigative reports, adequate investigative information and reference to all material evidence and facts that are reasonably believed to be either incriminating or exculpatory and/or favorable to any individual in the case. If a Bureau member learns of potentially incriminating or exculpatory and/or favorable information any time after submission of a case, the Bureau member or the handling investigator must prepare and submit a supplemental report documenting such information as soon as practicable. Supplemental reports shall be promptly processed and given to the case prosecutor.

If information is believed to be privileged or confidential (e.g., confidential informant or protected personnel files), the Bureau member should discuss the matter with a supervisor to determine the appropriate manner in which to proceed.

Brady Material Disclosure

Evidence or facts are considered material if there is a reasonable probability that they would affect the outcome of a criminal proceeding or trial. Determining whether evidence or facts are material often requires legal or even judicial review. If a Bureau member is unsure whether evidence or facts are material, the Bureau member should address the issue with a supervisor and/or prosecutor.

607.4 DISCLOSURE OF PERSONNEL INFORMATION

Whenever it is determined that *Brady* information is located in the personnel file of a member of this Bureau who is a material witness in a criminal case, the following procedure shall apply:

- a. No investigator's personnel file can be shared internally without first filing for and going through the *Pitchess* motion process.
 1. A general fishing expedition into an investigator's personnel records on the basis of mere curiosity to see if the records contain any material favorable to the defendant is not permitted.
 2. In connection with any *Brady* investigation and/or review, however, the elected District Attorney, or his/her designee, in their discretion, may review the investigator's personnel file without following the procedures listed above or below.
- b. In the event that a *Pitchess* motion has not already been filed by the criminal defendant or other party pursuant to Evidence Code § 1043, the prosecuting attorney shall be notified of the potential presence of *Brady* information in the investigator's personnel file.
- c. The prosecuting attorney should then be requested to file a *Pitchess* motion in order to initiate an in camera review by the court.
- d. Any member who is the subject of such a motion shall be notified in writing that a motion has been filed immediately or as soon as practicable. The member, and/or his representative, has the right to attend the hearing,
 1. There is no mandate for the investigator to attend the hearing, or to disclose to the prosecutor information in his personnel records.
 2. No investigator is required to attend the in camera hearing, to request the information, to review his files, or to share any of that material with the prosecution.
- e. The Professional Standards supervisor, or designee, shall accompany all relevant files during any in camera inspection and address any issues or questions raised by the court in determining whether any information contained in the files is both material and favorable to the criminal defendant.
- f. If the court determines that there is relevant *Brady* information contained in the files, only that information ordered released will be copied and released to the parties filing the motion.
 1. Prior to the release of any information pursuant to this process, the Professional Standards supervisor, or designee, shall request a protective order from the court limiting the use of such information to the involved case and requiring the return of all copies upon completion of the case.

Brady Material Disclosure

2. The County Counsel representative or DDA should request that the court order the defense attorney to not disseminate the information to any other attorneys or personnel for use in other cases.
 3. The County Counsel representative or DDA should request that the defense attorney be ordered to return the disclosed material to the DDA, County Counsel or to the court after the case is resolved to be retained and sealed in the court's records.
- g. If the Brady material contained is ordered to be disclosed, the prosecutor should discuss the information with the witness. However, proper precautions must be taken to maintain the confidentiality of the material. Use or dissemination of the material outside of the context of preparing for trial may waive any rights to non-disclosure, essentially making the material a public record, which the OCDA would be required to disclose upon request.
1. The witness should be advised not to copy, disclose, or share any material provided to him /her to assist in his/her preparation for testifying and to promptly return all such materials to the prosecutor after their use.

607.5 APPEAL PROCESS

The assistant district attorney supervising the Special Prosecutions Unit will invite, in writing, the Bureau member and/or their representative, to provide any additional material or information they wish to be considered in making the final *Brady* related decision. The Bureau member will also be afforded an opportunity to meet directly with the senior assistant district attorneys to present their position in connection with the *Brady* related decision. The OCDA will not draw any negative inferences whatsoever if the Bureau member in question, decline the invitation and decide not to provide any additional material or information.

Further, after decision of the senior district attorneys, the Bureau member and/or their representative, may meet with the District Attorney to appeal the decision.

For further information, refer to the Orange County District Attorney's Office *Brady* for Law Enforcement Policy.

607.6 INVESTIGATING BRADY ISSUES

A punitive action, or denial of promotion on the 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.

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 the law and to the rules and procedures adopted by the local agency.

Brady Material Disclosure

If the Bureau receives information from any source that a member may have issues of credibility, dishonesty or has been engaged in an act of moral turpitude or criminal conduct, or excessive use of force, the information shall be investigated and processed in accordance with the Personnel Complaints Policy § 1007.

The presence of *Brady* information is not grounds for discipline.

607.7 TRAINING

The Bureau will provide Bureau members with periodic training on the requirements of this policy upon hiring (during orientation) and every two years thereafter.

Facial Recognition

608.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the use of Facial Recognition by the Orange County District Attorney's Bureau of Investigation.

The Orange County District Attorney's Bureau of Investigation considers the results, if any, of a facial recognition search to be advisory in nature as an investigative lead only. Facial recognition search results are not considered positive identification of a subject and do not, on their own, establish probable cause without further investigation. Any possible connection or involvement of the subject(s) to the investigation must be determined through further analysis and investigative methods.

608.1.1 DEFINITIONS

Candidate Images: The possible results of a facial recognition search. When facial recognition software compares a probe image against the images contained in a repository, the result is a list of most likely candidate images that were determined by the software to be sufficiently similar to or most likely to resemble the probe image to warrant further analysis. A candidate image is an investigative lead only and does not establish probable cause to obtain an arrest warrant without further investigation.

Facial Recognition: The automated searching of a facial image (probe) against a known database(s) resulting in a list of candidates ranked by a computer-evaluated similarity score. This is commonly referred to as a "one-to-many" comparison.

Facial Recognition Program: An entity's facial recognition initiative that includes the management of human components (management, analysts, examiners, authorized users), ownership and management of the facial recognition system (technical components), and the establishment and enforcement of entity-wide processes, policies, and procedures.

Facial Recognition Software/Technology: Third party software that uses specific proprietary algorithms to compare facial features from one specific picture – a probe image – to many others (one-to-many) that are stored in an image repository to determine most likely candidates for further investigation.

Facial Recognition System: The technical components of a facial recognition program, such as hardware, software, interfaces, image repositories, biometric templates, autogenerated candidate lists, etc. While some entities own such a system, others may only have authorized access to another entity's facial recognition system.

First Amendment: Protects freedom of speech, religion, the press, assembly, and the right to petition the Government for a redress of grievances.

Facial Recognition

Fourth Amendment: Protects citizens from unreasonable search and seizure. The government may not conduct any searches without a warrant, and such warrant must be issued by a judge and based on probable cause.

Fourteenth Amendment: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

For Official Use Only (FOUO): Unclassified, but sensitive information that may or may not otherwise be categorized by statute or regulation. Dissemination of FOUO information is typically restricted to persons with a "need-to-know" (access is required for the performance of official duties).

Investigative Lead: Any information which could potentially aid in the successful resolution of an investigation, but does not imply positive identification of a subject or that the subject is guilty of a criminal act.

Law Enforcement Sensitive (LES): Refers to unclassified information originated by agencies with law enforcement missions that may be used in criminal prosecution and requires protection against unauthorized disclosure to protect sources and methods, investigative activity, evidence, or the integrity of pretrial investigative reports. Recipients are prohibited from subsequently posting the information marked LES on a website or an unclassified network.

One-to-Many Face Image Comparison: The process whereby a probe image from one subject is compared with the features of reference images contained in an image repository, generally resulting in a list of most likely candidate images.

Probe: Any face image used by facial recognition software for comparison with the face images contained within a face image repository.

Unsolved Image File: A lawfully obtained probe image of an unknown suspect may be added by authorized law enforcement users to an unsolved image file pursuant to an authorized criminal investigation and if a search has produced no candidates and the subject remains unknown. Images in an unsolved image file are periodically compared with the known images in an image repository.

Valid Law Enforcement Purpose: A purpose for information / intelligence gathering, development, or collection, use, retention, or sharing that furthers the authorized functions and activities of a law enforcement agency, which may include the prevention of crime and ensuring public safety, while adhering to law and agency policy.

608.2 POLICY

The policy of the Orange County District Attorney's Bureau of Investigation is to solely utilize facial recognition technology as an investigative tool during investigations. Ensuring all facial recognition uses

Facial Recognition

are consistent with authorized purposes, while not violating the privacy, civil rights, and civil liberties of individuals, is paramount. The Orange County District Attorney's Bureau of Investigation has access and use of facial recognition software and resources, such as the Los Angeles County Regional Identification System (LACRIS) and the Federal Bureau of Investigation (FBI), to support investigative efforts. However, facial recognition search results are not considered positive identification and do not establish probable cause without further investigation; rather, they are advisory in nature as an investigative lead only.

Facial Recognition technology can be valuable in detecting and preventing criminal activity, reducing imminent threat to health or safety, assisting in the identification of potential witnesses and/or victim(s) of crime, and helping in the identification of persons who lack capacity or are otherwise unable to identify themselves (such as an incapacitated, deceased, or otherwise at-risk person).

This policy provides personnel with guidelines and principles applicable to the access, dissemination, and use of images related to the use and/or implementation of a facial recognition program or system. This policy assists personnel in:

- Increasing public safety and improving security.
- Minimizing the threat and risk of injury to the public.
- Minimizing the threat and risk of physical injury or financial liability to law enforcement and others responsible for public protection, safety, or health.
- Minimizing the potential risks to individual privacy, civil rights, civil liberties, and other legally protected interests.
- Protecting the integrity of criminal investigatory and justice systems processes.
- Minimizing the threat and risk of damage to real or personal property.
- Fostering trust by strengthening transparency, oversight, and accountability.
- Making the most effective use of public resources.

608.3 USE OF FACIAL RECOGNITION

All uses of facial recognition systems are for official use only and are law enforcement sensitive. The provisions of this policy are provided to support the following authorized uses of facial recognition information:

- An active or ongoing criminal investigation.
- To assist in the identification of potential witnesses and/or victims of violent crime.
- To investigate and/or corroborate tips and leads.
- A reasonable suspicion that an identifiable individual has committed a criminal offense or is involved in or planning criminal conduct or activity that presents a threat to any individual or the community.
- To mitigate an imminent threat to health or safety of the community.

Facial Recognition

- To assist in the identification of a person who lacks the capacity or is otherwise unable to identify themselves (such as an incapacitated, deceased, or otherwise at-risk person).
- For persons who lack the capacity or are otherwise unable to identify him or herself and who are a danger to themselves or others.
- For a person who an investigator reasonably believes is concealing his or her true identity and has a reasonable suspicion the individual has committed a misdemeanor or felony crime other than concealing his or her identity.

608.4 FACIAL RECOGNITION ACCESS

Authorized access to a facial recognition system will be granted only to personnel whose position and job duties require such access and who have successfully completed any required training. Any provided credentials to facial recognition systems that are not transferrable, must not be shared and must be kept confidential.

Authorized personnel, who have been granted access to facial recognition system(s) by an external entity, can perform facial recognition searches utilizing image repositories owned/maintained by such entity. Additionally, authorized personnel may request facial recognition searches be performed by an external entity that operates a facial recognition program.

608.4.1 EXTERNAL ENTITIES

The Orange County District Attorney's Bureau of Investigation does not maintain or keep any database to conduct facial recognition searches and shall only utilize external entities and resources (such as FBI, LACRIS, mugshot repositories, etc.) to conduct facial recognition searches. In addition to adhering to this policy, personnel granted access to an external entity's facial recognition system will also comply with the external entity's policies for such usage. Data on requested, accessed, and searched facial recognition information is the responsibility of the entity with ownership of the facial recognition system(s). Likewise, images accessed and/or searched through external entities are subject to the retention policies of the respective agencies authorized to maintain or own those images and/or repositories.

608.4.2 PROHIBITED USES

The Orange County District Attorney's Bureau of Investigation prohibits access to and use of facial recognition systems, including dissemination of facial recognition search results, for the following purposes:

- Non-law enforcement (including, but not limited to personal purposes).
- Any purpose that violates the U.S. Constitution or laws of the United States, including the protections of the First, Fourth, and Fourteenth Amendments.
- Prohibiting or deterring lawful individual exercise of other rights, such as freedom of association, implied by and secured by the U.S. Constitution or any other constitutionally protected right or attribute.

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- Any other access, use, disclosure, or retention that would violate applicable law, regulation, or policy.

Per Cal-Photo policy, California DMV images shall not be saved or downloaded to create a local database or used for facial recognition purposes.

608.5 SHARING AND DISSEMINATING FACIAL RECOGNITION INFORMATION

Facial recognition information shall not be:

- Sold, published, exchanged, or disclosed to commercial or private entities or individuals except as required by applicable law.
- Disclosed or published without prior notice to the originating entity that such information is subject to disclosure or publication.
- Disclosed to unauthorized individuals or for unauthorized purposes.

608.6 REQUESTS FOR FACIAL RECOGNITION SERVICES

Law enforcement personnel, outside of the OCDA, may request facial recognition searches to assist with identifying a person who has been lawfully detained or for an investigative lead. Bureau personnel with the authority and access to assist with such a request, must review each request before processing the search to ensure compliance with this policy and applicable laws. Requesters must acknowledge that the results of any facial recognition search shall be deemed an investigative lead only and are not considered a positive identification of any subject, nor probable cause to arrest. For auditing purposes, the OCDA employee who is completing the search request is responsible for maintaining a record of the search for 5-years. Recordation may be through the use of the [OCDA Facial Recognition Search Request Form](#) (accessible on the DA Intranet) or by other method that includes, at a minimum, the following:

- Date of Search
- Requester's Name, Agency, Phone Number, Email, Case/File Number, and Reason For Search

When utilizing the resources of an external entity, such as LACRIS, to fulfill a search request, personnel must comply with the external entity's policy and user requirements. The use of the LACRIS facial recognition system is controlled by state law pertaining to Criminal Offender Record Information (CORI). All uses of the LACRIS facial recognition system will be performed on a need-to-know and right-to-know basis per CORI regulations. All uses of the LACRIS facial recognition system and search requests are subject to audit by the California Department of Justice and LACRIS. In the event of an audit, the user will be required to provide appropriate justification for the use or request of a facial recognition search. Appropriate justification shall include a situation description and purpose for the search, including a detailed account of circumstances amounting to reasonable suspicion, a report number, and an offense type.

Facial Recognition

Regardless of the external entity utilized, all uses of facial recognition systems will be performed on a need-to-know and right-to-know basis.

608.7 ACCOUNTABILITY

Supervisors must ensure user compliance with this policy by:

- Ensuring access to facial recognition systems is granted only to personnel whose position and job duties require such access and who have successfully completed any required training.
- Ensuring all facial recognition uses are consistent with authorized purposes while not violating the privacy, civil rights, and civil liberties of individuals.
- Providing supervisory oversight in any case where facial recognition software was used as an investigative lead. In such cases, the employee's supervisor should review the case to ensure the facial recognition was used as an investigative lead and not solely to establish probable cause for an arrest.

608.8 INVESTIGATIVE LEADS

The Orange County District Attorney's Bureau of Investigation considers the results, if any, of a facial recognition search to be advisory in nature as an investigative lead only. Facial recognition search results are not considered positive identification of a subject and do not, on their own, establish probable cause without further investigation. Any possible connection or involvement of the subject(s) to the investigation must be determined through further investigative methods.

Investigative leads should be vetted with supervisory oversight. Personnel will need to establish their own probable cause before making an arrest. In any case where facial recognition software was used as an investigative lead, the employee's supervisor should review the case in order to ensure the facial recognition was used as an investigative lead and not solely to establish probable cause for an arrest.

608.9 TRAINING

Authorized access to a facial recognition system will be granted only to personnel whose position and job duties require such access and who have successfully completed any required training. Personnel seeking access to facial recognition system(s) owned/managed by an external entity, may be required to acknowledge adherence to the external entity's facial recognition policy or the completion of specialized training prior to gaining access to their system(s).

Chapter 7 - Equipment

Bureau Owned & Personal Property

700.1 PURPOSE AND SCOPE

Bureau employees are expected to properly care for Bureau property assigned or entrusted to them. Occasional loss or damage to personal or Bureau property may occur while performing their assigned duty. Certain procedures are required depending on the loss and ownership of the item.

700.2 CARE OF BUREAU PROPERTY

Employees shall be responsible for the safekeeping, serviceable condition, proper care, use and replacement of Bureau property assigned or entrusted to them. An employee's intentional or negligent abuse or misuse of Bureau property may lead to discipline including, but not limited to the cost of repair or replacement.

- a. Employees shall promptly report through their chain of command, any loss, damage to, or unserviceable condition of any Bureau issued property or equipment assigned for their use.
- b. The use of damaged or unserviceable Bureau property should be discontinued as soon as practicable and replaced with comparable Bureau property as soon as available and following notice to a supervisor.
- c. Except when otherwise directed by competent authority or required by exigent circumstances, Bureau property shall only be used by those to whom it was assigned. Use should be limited to official purposes and in the capacity for which it was designed.
- d. Bureau property shall not be thrown away, sold, traded, donated, destroyed, or otherwise disposed of without proper authority.
- e. In the event that any Bureau property becomes damaged or unserviceable, no employee shall attempt to repair the property without prior approval of a supervisor.

700.3 FILING CLAIMS FOR PERSONAL PROPERTY

Claims for reimbursement for damage or loss of personal property must be made on the County of Orange [Personal Property Claim](#) form. This form is submitted to the employee's immediate supervisor. The supervisor may require a separate written report of the loss or damage.

The supervisor shall direct a memo to the appropriate commander which shall include the results of his /her investigation and whether the employee followed proper procedures. The supervisor's report shall address whether reasonable care was taken to prevent the loss or damage.

Bureau Owned & Personal Property

Upon review by the staff and a finding that no misconduct or negligence was involved, repair or replacement may be recommended by the Assistant Chief, or designee who will then forward the claim to the Finance Department.

The Bureau will not replace or repair luxurious or overly expensive items (jewelry, exotic equipment, etc.) that are not reasonably required as a part of work.

700.3.1 REPORTING REQUIREMENT

A verbal report shall be made to the employee's immediate supervisor as soon as circumstances permit. If at any time during the verbal report the supervisor develops a suspicion of misconduct, the interview should be suspended until the supervisor has complied with P.O.B.R.

A written report shall be submitted before the employee goes off duty or within the time frame directed by the supervisor to whom the verbal report is made. A Bureau member may utilize the assistance of a labor representative in writing the report.

700.4 LOSS OR DAMAGE OF PROPERTY OF ANOTHER

Investigators and other employees intentionally or unintentionally may cause damage to the real or personal property of another while performing their duties. Any employee who damages or causes to be damaged any real or personal property of another while performing any law enforcement functions, whether in or outside the jurisdiction of the County of Orange, shall report it as provided below:

- a. A verbal report shall be made to the employee's immediate supervisor as soon as circumstances permit. If at any time during the verbal report the supervisor develops a suspicion of misconduct, the interview should be suspended until the supervisor has complied with P.O.B.R.
- b. A written report shall be submitted before the employee goes off duty or within the time frame directed by the supervisor to whom the verbal report is made. A Bureau member may utilize the assistance of a labor representative in writing the report.

700.4.1 DAMAGE BY PERSON OF ANOTHER AGENCY

If employees of another jurisdiction cause damage to real or personal property belonging to the County of Orange, it shall be the responsibility of an Orange County District Attorney's Office Bureau of Investigation investigator present or the Orange County District Attorney's Office Bureau of Investigation investigator responsible for the Bureau property to make a verbal report to his or her immediate supervisor as soon as circumstances permit. The investigator shall submit a written report before going off duty or as otherwise directed by the supervisor. If at any time during the verbal report the supervisor develops a suspicion of misconduct, the interview should be suspended until the supervisor has complied with P.O.B.R. Likewise, a Bureau member may utilize the assistance of a labor representative in writing the report.

These written reports, accompanied by the supervisor's written report, shall promptly be forwarded to the Assistant Chief or Chief via the chain of command.

Bureau Owned & Personal Property

700.5 PERSONAL VEHICLE USAGE

The Orange County District Attorney Bureau of Investigation requires employee's to utilize their personal vehicles to conduct Bureau-related business (e.g., subpoena service, witness transportation, court appearance, etc.) if no pool cars are available or accessible. If a Bureau employee should be involved in any sort of collision, the following procedures should be followed:

700.5.1 EMPLOYEE RESPONSIBILITIES

- a. Notify local law enforcement agency to file a collision report.
- b. Notify immediate supervisor as soon as practicable.
- c. Complete a [County Collision Report](#) within 3 days. If unable to do so, the employee's supervisor will complete the report. A Bureau member may utilize the assistance of a labor representative prior to completing the report.
- d. If any injury is sustained as a result of the collision, refer to Occupational Disease and Work-Related Injury Policy § 1017.

If the employee is deemed the "at fault" party, they may be subject to discipline per the Disciplinary Policy § 325.

700.5.2 SUPERVISORY RESPONSIBILITIES

- a. Complete a County Collision Report within 3 days if the employee is unable to do so.
- b. If the employee is injured, complete the Supervisor's Investigation of Employee Injury or Illness form as outlined in the Safety and Loss Prevention Resource Manual Policy (refer to Occupational Disease and Work-Related Injury Reporting § 1017.3.2).
- c. If the employee is injured, provided them with an Occupational Injury and Illness Reporting Packet (refer to Occupational Disease and Work-Related Injury Reporting § 1017.3.2).
- d. Forward a copy of the County Collision Report, along with any obtained police reports and/or memos, to the following:
 1. Professional Standards Division
 2. Human Resources

700.6 SEPARATION FROM BUREAU

Upon separation from the Bureau, all employees shall:

1. Return all Bureau-assigned equipment, including uniforms with OCDA Bureau of Investigation logos or insignia.
2. Return both dome badge and flat badge unless the dome badge was previously purchased and the employee separated from the Bureau in good standing, or as authorized by the Bureau Chief. If the dome badge was previously purchased by the investigator, the Bureau will reimburse the investigator upon proof of purchase (i.e., receipt or other proof of purchase).
3. Upon honorable retirement, if a dome badge had not been previously purchased, the investigator has the option to purchase a dome badge at replacement cost.

Bureau Owned & Personal Property

700.6.1 BUREAU BADGE(S) / IDENTIFICATION CARD

Sworn employees whom are "Honorably Retiring" or separating from service with the Orange County District Attorney Bureau of Investigation may be issued a Bureau identification card and flat badge in accordance with the guidelines listed below:

Regular / Honorable Retirement

Upon honorable retirement with the Orange County District Attorney Bureau of Investigation, the employee is eligible to receive the following:

- Identification card with "CCW Approved" endorsement per Penal Code § 25455
- LEOSA identification card per § 18 USC 926C (only if an aggregate of 10 years or more in law enforcement)
- Flat badge ("Retired") attached to wallet
- Dome badge at replacement cost

Honorable Separation

Upon honorable separation with the Orange County District Attorney Bureau of Investigation, the employee is eligible to receive the following:

- LEOSA identification card per § 18 USC 926C (only if an aggregate of 10 years or more in law enforcement)
- NO identification card although may apply for CCW license per Penal Code § 26150 (could obtain CCW from prior agency in which honorable retirement was obtained)
- NO flat badge

Termination / Retirement or Separation in Lieu of Termination

- NO identification card, may apply for CCW license per Penal Code § 26150
- NO LEOSA identification card per § 18 USC 926C (if an aggregate of 10 years or more in law enforcement, may request a LEOSA identification card via www.Leosaonline.com)
- NO flat badge

Medical Retirement (non-psychological reasons)

Regardless of years of service, the employee is eligible to receive the following:

- Identification card with "CCW Approved" endorsement per Penal Code § 25455
- LEOSA identification card per § 18 USC 926C (only if an aggregate of 10 years or more in law enforcement)

Bureau Owned & Personal Property

- Flat badge ("Retired") attached to wallet

Medical Retirement (psychological reasons)

Regardless of years of service, the employee is eligible for the following:

- Identification card only - NO "CCW Approved" endorsement
- NO LEOSA identification card per § 18 USC 926C (for further information, visit www.Leosaonline.com)
- NO flat badge

Vehicle Maintenance

701.1 PURPOSE AND SCOPE

Employees are responsible for assisting in maintaining Bureau vehicles so that they are properly equipped, properly maintained, properly refueled and present a clean appearance.

701.2 DEFECTIVE VEHICLES

When an employee becomes aware that a Bureau vehicle is inoperative or in need of repair that affects the overall safety of the vehicle, that vehicle shall immediately be removed from service. The employee will update the pool car check-out computer and indicate the type of maintenance required/requested. The pool car check-out computer is located in the Professional Standards Division. The employee will then make proper notification to the Professional Standards Division.

If a Bureau vehicle is determined to have minor damage or is in need of routine maintenance, and does not affect the overall safety of the vehicle, the employee will update the pool car check-out computer followed up by making proper notification to the Professional Standards Division.

It is the responsibility of the employee who identifies the need for service and/or repair to make proper notification to the Professional Standards Division, either in person or via email, to ensure the proper service and/or repair can be completed.

Vehicles being repaired should be returned to service and be available to all Bureau personnel as soon as practical.

701.2.1 SEVERE USE

Vehicles operated under severe-use conditions, which include operations for which the vehicle is not designed or that exceed the manufacturer's parameters, should be removed from service and subjected to a safety inspection as soon as practicable. Such conditions may include rough roadway or off-road driving, hard or extended braking, pursuits or prolonged high-speed operation.

701.3 REMOVAL OF WEAPONS

All firearms, weapons and control devices shall be removed from a Bureau vehicle and properly secured in the Bureau armory prior to the vehicle being released for maintenance, service or repair.

701.4 VEHICLE EQUIPMENT

The following items shall be maintained in all Bureau vehicles for emergency purposes and to perform routine duties:

- a. County of Orange fuel card assigned to the vehicle
- b. Vehicle insurance information

Vehicle Maintenance

701.5 VEHICLE REFUELING

Absent emergency conditions or supervisor approval, employees driving Bureau vehicles shall not place a vehicle in service that has less than 1/4 tank of fuel. Vehicles shall only be refueled at an authorized location.

Petty Cash and Requisitions

702.1 PURPOSE AND SCOPE

This policy provides guidelines to ensure Bureau members handle cash appropriately in the performance of their duties.

This policy does not address cash-handling issues specific to the Property and Evidence Policy § 801 and Informants Policy § 601.

702.2 POLICY

It is the policy of the Orange County District Attorney Bureau of Investigation to properly handle and document cash transactions and to maintain accurate records of cash transactions in order to protect the integrity of Bureau operations and ensure the public trust.

702.3 SAFE FUNDS

The Bureau Chief shall designate a person as the fund manager responsible for maintaining and managing the petty cash fund. This position is typically held by the Professional Standards Division.

Each petty cash fund requires the creation and maintenance of an accurate and current transaction ledger and the filing of invoices, receipts, cash transfer forms and expense reports by the fund manager.

702.4 SAFE FUND TRANSACTIONS

The fund manager shall document all transactions on the ledger and any other appropriate forms. Each person participating in the transaction shall sign or otherwise validate the ledger, attesting to the accuracy of the entry. Transactions should include the filing of an appropriate receipt, invoice or cash transfer form. Transactions that are not documented by a receipt, invoice or cash transfer form require an expense report.

702.5 SAFE FUND AUDITS

The fund manager shall perform an audit no less than once every six months. This audit requires that the fund manager and at least one command staff member, selected by the Bureau Chief, review the transaction ledger and verify the accuracy of the accounting. The fund manager and the participating member shall sign or otherwise validate the ledger attesting to the accuracy of all documentation and fund accounting. A discrepancy in the audit requires documentation by those performing the audit and an immediate reporting of the discrepancy to the Bureau Chief.

Transference of fund management to another member shall require a separate petty cash audit and involve a command staff member.

Petty Cash and Requisitions

A separate audit of each petty cash fund should be completed on a random date, approximately once each year by the Bureau Chief or the County.

Vehicle Use

703.1 PURPOSE AND SCOPE

The purpose of this policy is to establish a system of accountability to ensure Bureau vehicles are used appropriately. This policy provides guidelines for on and off-duty use of Bureau vehicles, both pool and assigned.

Bureau vehicles are intended for business-related purposes. Members may use Bureau pool vehicles in the course and scope of their duties to further the Bureau's mission, operational goals, and objectives while sworn investigators will be assigned a Bureau vehicle.

703.2 VEHICLES DEFINED

For the purpose of this section, the term Bureau vehicle shall apply to any car, truck, van, or motorized vehicle owned, leased, rented or otherwise assigned to the Bureau of Investigation.

703.3 VEHICLES SUBJECT TO INSPECTION

All Bureau vehicles are subject to inspection and/or search at any time by a supervisor and no member assigned to or operating such vehicle shall be entitled to any expectation of privacy with respect to the vehicle or its contents; however, the assigned member, or his/her representative, is permitted to be present should a search of the vehicle be conducted.

703.4 POLICY

The Orange County District Attorney Bureau of Investigation provides vehicles to members for Bureau-related business and will assign marked, unmarked, leased, rented, and undercover vehicles based on a determination of operational efficiency, economic impact to the Bureau, requirements for tactical deployments and other considerations to only sworn investigators. Pool vehicles will be available for use by Bureau members not assigned a vehicle.

703.5 LEGAL REQUIREMENTS

Vehicles will be operated in a safe manner and in compliance with the law, with the exception of the provisions provided under the policies relating to Vehicle Pursuits § 311.

Members shall observe and obey all laws and ordinances, all rules/regulations, procedures, orders and policies of the Bureau when using a Bureau vehicle. In the event of improper action, it will be presumed that the member was familiar with the law, rule/regulation, procedure, policy or order in question.

703.6 INVESTIGATOR VEHICLE ASSIGNMENTS

Bureau vehicles assigned for on-duty and/or take-home use are governed by this policy. Assigned vehicles are subject to change at any time and will be coordinated by the Vehicle Coordinator in the

Vehicle Use

Professional Standards Division, at the direction of the Bureau Chief, or designee. Both County owned and maintained vehicles as well as leased vehicles will be assigned to an investigator. An investigator's unit assignment may require a specific vehicle be assigned such as those positions covered by grants or specific vehicle features.

The assignment of vehicles may be suspended when the member is unable to perform his/her regular assignment or is placed on administrative leave. Refer to Fitness for Duty § 1009 and Personnel Complaints § 1005.

An investigator who is refused a vehicle and/or has permission for the vehicle withdrawn may challenge that action by meeting with the Bureau Chief. The investigator shall be permitted to bring their representative to the meeting with the Bureau Chief. The Bureau Chief shall make the final determination.

703.6.1 KEYS

Investigators assigned a permanent vehicle shall be issued keys and remotes (if equipped) for their respective vehicle. Investigators shall not duplicate keys. The loss of any assigned key shall be promptly reported in writing to Professional Standards, via email at VehicleCoordinator@ocdapa.org, through the employee's chain of command as soon as practicable.

Back up keys and remotes will be maintained by the Vehicle Coordinator in the Professional Standards Division.

703.6.2 MAINTENANCE

Investigators are responsible for the cleanliness (exterior and interior) and overall maintenance of their assigned vehicles. Car washes are available through the County contract. Failure to adhere to these requirements may result in discipline. The following should be performed as outlined below:

- a. Investigators shall make daily inspections of their assigned vehicles for service/maintenance requirements and damage. Any previously unreported damage, mechanical problems, or other problems with the vehicle shall be promptly reported to a supervisor and documented as appropriate.
- b. It is the investigator's responsibility to ensure that his/her assigned vehicle is maintained according to the established service and maintenance schedule.
- c. No more than two car washes per month via the County issued contract (Orange Car Wash), unless prior supervisor approval is obtained.
- d. Detailing of a vehicle via the County issued contract requires supervisory approval.
- e. All scheduled vehicle maintenance shall be performed as necessary and approved by the Professional Standards Division Vehicle Coordinator at an approved facility.
- f. All investigators of the Bureau shall notify their immediate supervisor, and the Vehicle Coordinator of any major repairs needed to their assigned Bureau vehicle and through the Professional Standards Division email, VehicleCoordinator@ocdapa.org and shall obtain approval for repairs at a Bureau approved repair facility.

Vehicle Use

- g. Investigators shall provide all maintenance receipts in order to process payment to VehicleCoordinator@ocdapa.org.
- h. Leased vehicles will be serviced and repaired pursuant to the lease agreement.

703.7 BUREAU OF INVESTIGATION POOL VEHICLES

Bureau of Investigation pool vehicle use is restricted to OCDA personnel Monday through Friday from 6:00 AM to 5:00 PM unless otherwise approved by a supervisor.

703.8 USE OF BUREAU POOL VEHICLES

703.8.1 SECURITY AND UNATTENDED VEHICLES

Unattended vehicles should be locked and secured at all times. No key should be left in the vehicle except when it is necessary that the vehicle be left running (e.g., continued activation of emergency lights, equipment charging). Investigators who exit a vehicle rapidly in an emergency situation or to engage in a foot pursuit must carefully balance the need to exit the vehicle quickly with the need to secure the vehicle.

Members shall ensure all weapons and portable radios are secured while the vehicle is unattended. Firearms shall be locked in the vehicle's trunk, in a locked container that is out of plain view, or in a locked container that is permanently affixed to the vehicle's interior and not in plain view (Penal Code 25140; Penal Code 25452). A locked container does not include a vehicle's utility or glove compartment (Penal Code 16850). Investigators shall be aware that negligent storage of a firearm in a vehicle could result in criminal prosecution under Penal Code 24510.

703.8.2 OTHER USE OF POOL VEHICLES

Members utilizing a pool vehicle for any purpose other than their normally assigned duties or normal vehicle assignment (e.g., transportation to training, community event) shall first notify their supervisor.

703.8.3 NON-SWORN MEMBER USE

Non-sworn members may use a code three equipped vehicle but are prohibited from using the code three equipment.

703.8.4 UNSCHEDULED TAKE-HOME USE OF POOL VEHICLES

Circumstances may arise where Bureau vehicles must be used by members to commute to and from work assignments. Members may take home Bureau vehicles only with prior approval of a supervisor and shall meet the following criteria:

- a. The circumstances are unplanned and were created by the needs of the Bureau.
- b. Other reasonable transportation options are not available.
- c. Off-street parking will be available at the member's residence.
- d. Vehicles will be locked when not attended.

Vehicle Use

- e. All firearms, weapons and control devices will be removed from the interior of the vehicle and properly secured in the residence when the vehicle is not attended, unless the vehicle is parked in a locked garage.

703.9 INSPECTIONS OF VEHICLES

Members shall be responsible for inspecting the interior and exterior of any vehicle before taking the vehicle into service and at the conclusion of their shifts. Any previously unreported damage, mechanical problems, unauthorized contents or other problems with the vehicle shall be promptly reported to a supervisor and the Professional Standards Division and documented as appropriate.

The interior of any vehicle that has been used to transport any person other than a member of this Bureau should be inspected prior to placing another person in the vehicle and again after the person is removed. This is to ensure that unauthorized or personal items have not been left in the vehicle.

When transporting any person in custody, the transporting member shall search all areas of the vehicle that are accessible by the person before and after that person is transported.

703.10 ON-DUTY USE

Bureau vehicles are intended to be used in support of the mission of the Orange County District Attorney's Office and specifically the Bureau of Investigation.

While on duty, investigators driving Bureau vehicles shall be armed, appropriately attired and carry their Bureau-issued identification. Investigators should also ensure that Bureau radio communication capabilities are maintained to the extent feasible or have their Bureau issued cell phone available.

703.11 OFF-DUTY USE

Assigned vehicles will not be used when off-duty except for the following reasons:

- a. In circumstances when a member has been placed on call by the Bureau Chief or Division Commanders and there is a probability that the member will be called back to duty. The investigator will carry and have accessible their duty firearms and be prepared to perform any function they would be expected to perform while on-duty. They shall also have their Bureau issued police identification card.
- b. When the member is performing a work-related function during what normally would be an off-duty period, including vehicle maintenance or traveling to or from a work-related activity or function.
- c. When the member has received permission from the Bureau Chief or authorized designee.
- d. When driving a take-home vehicle to and from work, an investigator should not initiate enforcement actions except in those circumstances where a potential threat to life or serious property damage exists. Investigators may render public assistance when it is deemed prudent (e.g., to a stranded motorist).

703.12 AUTHORIZED PASSENGERS

Vehicle Use

Bureau members operating Bureau vehicles shall not permit persons other than County personnel or persons required to be conveyed in the performance of duty, or as otherwise authorized, to ride as passengers in the vehicle, unless special circumstances exist.

703.13 DRUGS, ALCOHOL AND MEDICATION

The consumption of alcohol or other intoxicants is generally prohibited by on-duty members except during the course and scope of a specific duty or special assignment. Members who consume alcohol as part of a specific duty or special assignment shall not do so to the extent of impairing on-duty performance. Regardless of assignment, members shall operate Bureau vehicles in a safe manner and in compliance with all state laws regarding vehicle operation while intoxicated.

703.14 PARKING

Except when responding to an emergency or when urgent Bureau-related business requires otherwise, members driving Bureau vehicles should obey all parking regulations at all times.

Bureau vehicles should be parked in assigned stalls, if designated by Facilities. Members shall not park privately owned vehicles in stalls assigned to Bureau vehicles or in other areas of the parking lot that are not so designated unless authorized by a supervisor. Privately owned motorcycles should be parked in designated areas. Bureau members are not authorized to store any assigned Bureau vehicles at any County owned or contract parking facilities without prior Division Commander approval. No Bureau member may store personally owned vehicles at any County owned or contract parking facilities.

703.15 BUREAU VEHICLE COORDINATOR

The Vehicle Coordinator is established and shall be assigned to the Professional Standards Division. The Vehicle Coordinator shall maintain a file of all Bureau vehicle Unit Numbers and assignment of the vehicle. The Vehicle Coordinator shall be responsible for approving and monitoring compliance with vehicle use.

703.16 DAMAGE, ABUSE AND MISUSE OF BUREAU / COUNTY VEHICLE

When any Bureau vehicle is involved in a traffic collision or otherwise incurs damage, the involved member shall promptly do the following:

- a. Notify local law enforcement agency to file a collision report.
- b. Notify immediate supervisors as soon as practicable.
- c. Complete a [County Collision Report](#) within 3 days. If unable to do so, the employee's supervisor will complete the report. A Bureau member may utilize the assistance of a labor representative prior to completing the report.
- d. If any injury is sustained as a result of the collision, refer to Occupational Disease and Work-Related Injury Policy § 1017.

Vehicle Use

If the employee is deemed the "at fault" party, they may be subject to discipline per the Disciplinary Policy § 325.

Damage to any Bureau vehicle that was not caused by a traffic collision shall be immediately reported during the shift in which the damage was discovered, documented in memorandum format and forwarded to the Professional Standards commander. An administrative investigation may be initiated to determine if there has been any vehicle abuse or misuse. A Bureau member may utilize the assistance of a labor representative in writing the memorandum.

For information regarding a collision while on-duty, in a personally owned vehicle, refer to Bureau Owned & Personal Property § 700.5.

703.16.1 SUPERVISORY RESPONSIBILITIES

- a. Complete a County Collision Report within 3 days if the employee is unable to do so.
- b. If the employee is injured, complete the Supervisor's Investigation of Employee Injury or Illness form as outlined in the Safety and Loss Prevention Resource Manual Policy (refer to Occupational Disease and Work-Related Injury Reporting § 1017.3.2).
- c. If the employee is injured, provide them with an Occupational Injury and Illness Reporting Packet (refer to Occupational Disease and Work-Related Injury Reporting § 1017.3.2).
- d. Forward a copy of the County Collision Report, along with any obtained police reports and/or memos, to the following:
 1. Professional Standards Division supervising investigator
 2. Risk Management (email address included on County Collision report)

703.16.2 PERSONAL VEHICLE WHILE ON DUTY

When any Bureau member is involved in a traffic collision while on-duty and while using their personal vehicle, the member shall notify their immediate supervisor, and shall fill out the mandatory [County Collision Report](#) form. A report shall be filed with the agency having jurisdiction (see Bureau Owned & Personal Property - Personal Vehicle Usage § 700.5) by the involved member or their supervisor if the member is unable to do so.

703.17 ACCESSORIES AND / OR MODIFICATIONS

No modifications, additions or deletions of any equipment or accessories shall be made to any Bureau vehicle without written permission from the employee's assigned commander.

703.18 TOLL ROAD USAGE FOR ANY BUREAU VEHICLE

Law enforcement vehicles are not routinely exempted from incurring toll road charges.

In accordance with the County of Orange Toll Road Agreement:

Vehicle Use

The use of toll roads, with County issued sticker transponders, is for County business only and not for personal use. This policy applies to County owned/leased vehicles equipped with transponders only.

Assigned leased vehicles will not be equipped with toll road transponders. If an investigator chooses to equip an assigned leased vehicle with a toll road transponder and incurs fees for County business, they may submit for reimbursement pursuant to the County Business Travel and Meeting Policy which may require department approval of such fees. A justification Memo will be required to document each charge.

Acceptable use of toll roads:

1. Use of County vehicle in response to being called in from home for an emergency.
2. An accident or construction on the freeway that would make staying on the freeway wasteful, in regard to employee productivity while on duty in a County vehicle during the work day.
3. Driving to and from meetings may be acceptable upon approval from Bureau Command Staff.
4. Transport of Elected Officials.
5. Any response to an emergency, investigation or undercover activity where it is beneficial to the County.

Unacceptable uses of toll roads or sticker transponders:

1. Commuting to and from work, without a legitimate emergency/departmental purview.
2. For any personal use.
3. During employee's non-working hours including lunch breaks.
4. Transferring the sticker transponder to a non-County vehicle, or non-assigned vehicles.
5. Entering a toll road without a sticker transponder.

To avoid unnecessary toll road charges, all members operating Bureau vehicles on a toll road shall adhere to the following:

- a. Members operating Bureau vehicles for any reason other than in response to an emergency shall pay the appropriate toll charge or utilize the appropriate toll road transponder.
- b. Members passing through a toll plaza or booth during a response to an emergency shall notify, in writing, the appropriate Division commander within five working days explaining the circumstances.

703.19 FUEL CARDS

Fuel or Voyager cards may be assigned to personnel and/or vehicles to provide access to refueling stations for Bureau vehicles. Should such cards become lost or stolen, the assigned member shall notify their supervisor as soon as possible.

Whenever assigned to a Bureau vehicle that is maintained by the County garage, the investigator should use the County fueling station located on Civic Center Drive. (To Identify vehicles maintained by the County garage, those vehicles will have a County issued brass tag with a set of numbers located on the key ring and driver's inner door frame).

Vehicle Use

When it is necessary to use the Voyager Card for the purpose of fueling a County vehicle that requires unleaded gasoline, 87 octane gasoline shall be used unless the vehicle specifically requires a higher-octane level gasoline.

703.20 MILEAGE REPORTING REQUIREMENTS

All assigned Bureau vehicles require monthly mileage accounting. It is the investigator's responsibility to provide their vehicle's monthly mileage to their supervisor. The supervisor will then input the monthly mileage for their assigned personnel into the designated fleet mileage tracking system.

703.21 VEHICLE MAINTENANCE REQUIREMENTS

All Bureau vehicles must be maintained to ensure useful life, safe operation, and performance. Maintenance schedules are according to each vehicle type. Investigators are responsible for ensuring that vehicles are serviced within a reasonable mileage tolerance of (0 + 500 miles).

In addition to maintenance schedules, vehicle inspections should be completed routinely to ensure vehicle safety and reliability. This includes checking oil and fluid levels, tire inspection/pressure, and vehicle cleanliness.

Bureau owned vehicles that have County assigned numbers (brass plates located on the key ring and driver door inner edge) will be serviced by the County garage, while leased vehicles will have maintenance performed at designated service locations provided by the leasing company.

If there are questions regarding the repair or maintenance of an assigned vehicle, contact the Vehicle Coordinator or Professional Standards.

703.22 ATTIRE AND APPEARANCE

When operating any Bureau vehicle while off-duty pursuant to § 703.11, members may dress in a manner appropriate for their intended activity. Whenever in view of or in contact with the public, attire and appearance, regardless of the activity, should be suitable to reflect positively upon the Bureau.

Military Equipment

704.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the approval, acquisition, and reporting requirements of military equipment (Government Code § 7070; Government Code § 7071; Government Code § 7072).

704.1.1 DEFINITIONS

Definitions related to this policy include (Government Code § 7070):

Governing body – The elected or appointed body that oversees the Bureau. In the case of a law enforcement agency of a county, including a district attorney's office, governing body means the board of supervisors of the county.

Military equipment – Includes but is not limited to the following:

- Unmanned, remotely piloted, powered aerial or ground vehicles.
- Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers.
- High mobility multipurpose wheeled vehicles (HMMWV), two-and-one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached.
- Tracked armored vehicles that provide ballistic protection to their occupants.
- Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
- Weaponized aircraft, vessels, or vehicles of any kind.
- Battering rams, slugs, and breaching apparatuses that are explosive in nature. This does not include a handheld, one-person ram.
- Firearms and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition.
- Specialized firearms and ammunition of less than .50 caliber, including assault weapons as defined in Penal Code § 30510 and Penal Code § 30515, with the exception of standard-issue service weapons and ammunition of less than .50 caliber.
- Any firearm or firearm accessory that is designed to launch explosive projectiles.
- "Flashbang" grenades and explosive breaching tools.
- Munitions containing tear gas or OC, excluding standard, service-issued handheld pepper spray.
- Area denial electroshock devices, microwave weapons, water cannons, long-range acoustic devices (LRADs), acoustic hailing devices, and sound cannons.
- 40mm projective launchers, "bean bag", rubber bullet and specialty impact munition (SIM) weapons.

Military Equipment

- Any other equipment as determined by a governing body or a state agency to require additional oversight.

704.2 POLICY

It is the policy of the Orange County District Attorney that members of its Bureau of Investigations comply with the provisions of Government Code § 7071 with respect to military equipment.

704.3 MILITARY EQUIPMENT COORDINATOR

The Bureau Chief should designate a member of the Bureau to act as the military equipment coordinator. The responsibilities of the military equipment coordinator include but are not limited to:

- a. Acting as liaison to the governing body for matters related to the requirements of this policy.
- b. Identifying Bureau equipment that qualifies as military equipment in the current possession of the Bureau, or the equipment the Bureau intends to acquire that requires approval by the governing body.
- c. Conducting an inventory of all military equipment at least annually.
- d. Collaborating with any allied agency that may use military equipment within the jurisdiction of Orange County District Attorney (Government Code § 7071).
- e. Preparing for, scheduling, and coordinating the annual community engagement meeting to include:
 1. Publicizing the details of the meeting.
 2. Preparing for public questions regarding the Bureau's funding, acquisition, and use of equipment.
- f. Preparing the annual military equipment report for submission to the Bureau Chief and ensuring that the report is made available on the OCDA website (Government Code § 7072).

704.4 MILITARY EQUIPMENT CONSIDERATIONS

- a. The military equipment acquired and authorized by the Bureau is:
 1. Necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.
 2. Reasonably cost-effective compared to available alternatives that can achieve the same objective of officer and civilian safety.
- b. Military equipment shall be used by a Bureau member only after applicable training, including the completion of any course required by the Commission on Peace Officer Standards and Training, unless exigent circumstances arise.

704.5 MILITARY EQUIPMENT INVENTORY

The following, more fully described and incorporated into this policy in Attachments constitutes a list of qualifying equipment for the Bureau:

- Unmanned, remotely piloted, powered aerial or ground vehicles

Military Equipment

- Assault weapons defined under Penal Code § 30510 and Penal Code § 30515
- 40 mm Launchers
- Pepperball Launchers

704.6 APPROVAL

The Bureau Chief or the authorized designee shall obtain approval from the governing body by way of an ordinance adopting the military equipment policy. As part of the approval process, the Bureau Chief or the authorized designee shall ensure the proposed military equipment policy is submitted to the governing body and is available on the bureau website at least 30 days prior to any public hearing concerning the military equipment at issue (Government Code § 7071). The military equipment policy must be approved by the governing body prior to engaging in any of the following (Government Code § 7071):

- a. Requesting military equipment made available pursuant to 10 USC § 2576a.
- b. Seeking funds for military equipment, including but not limited to applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
- c. Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.
- d. Collaborating with another law enforcement agency in the deployment or other use of military equipment within the jurisdiction of this Bureau.
- e. Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body.
- f. Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of military equipment.
- g. Acquiring military equipment through any means not provided above.

704.7 COORDINATION WITH OTHER JURISDICTIONS

Military equipment used by any member of this Bureau shall be approved for use and in accordance with Bureau policy. Military equipment used by other jurisdictions that are providing mutual aid to the Bureau shall comply with their respective military equipment use policies in rendering mutual aid.

704.8 ANNUAL REPORT

Upon approval of a military equipment policy, the Professional Standards Commander shall submit a military equipment report to the governing body for each type of military equipment approved within one year of approval, and annually thereafter for as long as the military equipment is available for use (Government Code § 7072).

The Professional Standards Commander shall also make each annual military equipment report publicly available on the bureau website for as long as the military equipment is available for use. The report shall include all of the following information for the preceding calendar year.

- a. A summary of how the military equipment was used and the purpose of its use.

Military Equipment

- b. A summary of any complaints or concerns received concerning the military equipment.
- c. The results of any internal audits, any information about violations of the military equipment policy, and any actions taken in response.
- d. The total annual cost of each type of military equipment, including acquisition, personnel, training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for the military equipment in the calendar year following submission of the annual military equipment report.
- e. The quantity possessed for each type of military equipment.
- f. If the law enforcement agency intends to acquire additional military equipment in the next year, the quantity sought for each type of military equipment.

704.9 COMMUNITY ENGAGEMENT

Within 30 days of submitting and publicly releasing the annual report, the Bureau shall hold at least one well-publicized and conveniently located community engagement meeting, at which the public may discuss and ask questions regarding the annual report and the Bureau's funding, acquisition, or use of military equipment.

704.10 COMMUNITY CONCERNS

The public may submit questions or concerns to the Orange County District Attorney's Office, Bureau of Investigation regarding the Bureau's use of each type of military equipment by email to ProfessionalStandardsDivision@ocdapa.org or mail to Professional Standards Division, 300 N. Flower St., Santa Ana, CA 92703. The Bureau's Professional Standards Division will ensure the Bureau responds in a timely manner to any submitted questions or concerns.

Chapter 8 - Support Services

Communication Operations

800.1 PURPOSE AND SCOPE

This policy establishes guidelines for the basic functions of Orange County Probation Dispatch (OCPD). It addresses the immediate information needs of the Bureau in the course of its normal daily activities and during emergencies.

800.2 POLICY

This policy and procedure establishes personnel, administrative, and operational guidelines applicable to the use of Bureau radios with the OCPD Center.

All employees shall become familiar with proper use and care of Bureau radios and communications equipment.

In all circumstances that are not addressed in this policy, investigators are expected to exercise their best discretion to provide for the well-being of the citizens, the county and the investigator.

800.3 FCC COMPLIANCE

Orange County District Attorney Bureau of Investigation radio operations shall be conducted in accordance with Federal Communications Commission (FCC) procedures and guidelines.

800.4 COMMUNICATION OPERATIONS

The Orange County District Attorney Bureau of Investigation provides dispatch services which enhance communications abilities, coordination of resources, increased safety to investigators and facilitation of the command and control functions of the Bureau. Dispatch services have been contracted through OCPD. OCPD hours of operation are as follows:

Monday – Friday 6:00 a.m. to 9:00 p.m.

Saturday – Sunday 6:00 a.m. to 4:00 p.m.

Orange County Communications (Control One) provides 24-hours, 7-days a week countywide communication assistance to investigators in the event OCPD is unavailable.

Orange County Communications (Control One) (714) 628-7000

Orange County Probation Dispatch (OCPD) (714) 935-7717 Fax (714) 935-7831

800.5 COMMUNICATIONS LOG

It shall be the responsibility of OCPD to create a log documenting the activities of investigators in the field. Each field activity will generate a unique incident number which includes the following:

Communication Operations

- Date and time of incident (start/end)
- Type of incident (subpoena, interview, residence check, search warrant, etc.)
- Location of incident
- Identification of investigator(s) assigned
- Disposition (time incident is completed)

800.6 RADIO COMMUNICATIONS

Operations are more efficient and officer safety is enhanced when dispatchers, supervisors, and investigators know the status of investigators, their locations and the nature of the incident.

Investigators shall maintain a professional approach to radio communication. Radio transmissions should be calm, brief, and clear utilizing sound judgement in content.

Investigators in the field conducting an investigation or taking enforcement action shall maintain radio contact with dispatch. Investigators shall initiate radio contact with dispatch using their assigned radio call sign (example, D401) followed with their badge number and their partners badge number/hand-held radio number (Example, "D401, badge number 160 and D324 badge number 133 10-8"). Investigators terminating field work activities would notify dispatch that they are out of service (example, "D401, 10-7").

Investigators shall routinely and primarily run vehicle license plates or subject checks through Orange County Communication (Control One) on purple channel. OCPD can run these checks depending on the amount of radio traffic at that particular time. OCPD will only run license plates and subjects if you are out at a location. All rolling vehicle/subject checks must be made through Control One.

Investigators serving search warrants, arrest warrants, probation/parole searches or conducting surveillances shall notify OCPD of their location and type of operation being conducted. OCPD shall be provided a copy of an Operational Plan including the list of radios involved prior to the operation.

800.7 RADIO CODES

Investigators shall know and use the County of Orange "Official Radio Code" that has been established to ensure common radio terminology for all radio system users, such as the ten codes, the phonetic alphabet and other county adopted codes.

800.8 EMERGENCY COMMUNICATIONS

In an emergency, clear communication is critical. Speak calmly using controlled tones. Pronounce words distinctly and rather slowly. OCPD can only help you if they understand you. Start your broadcast by saying, "D401, 10-33." This is the radio code that alerts dispatch to your emergency. This should be followed by the most critical piece of information which is your location. Dispatch will not be able to send help, unless they receive this information. Lastly, follow up with the nature of the emergency (fight, pursuit, a crime occurring now, etc.) and the resources you would like to utilize (number of responding units, Air

Communication Operations

Support, K-9, or containment information, etc.) All air support units would communicate through one of the countywide frequencies and dispatched through Control One.

When using the radio and you hear another unit with emergency “10-33” traffic, you should immediately cease transmitting and leave the frequency clear.

800.9 PURSUIT RADIO PROCEDURES

The investigator initiating a pursuit shall immediately notify Control One, by radio (Red Channel) that they are in pursuit. The initiating investigator or investigator designated the responsibility to call the pursuit, shall provide Control One with the following information:

- Investigator’s call sign
- Violation/reason for pursuit
- Suspect’s vehicle description and license plate number
- Location, speed and direction of travel
- Number, age and description of the occupants
- Traffic conditions

800.10 SAFETY CHECKS

Safety of the employees is of utmost concern. One method of ensuring the safety of employees is to perform safety checks on a regular basis. Routine safety checks may be conducted for any field unit that is:

- Arrived at location (10-97) and has not communicated with dispatch in approximately 15 minutes of their last radio contact.
- In service (10-8) and has not communicated with dispatch within 60 minutes of their last radio contact.
- When the safety check is due, contact the unit via the radio. If there is no response, another attempt with radio contact shall be made.
- If there is still no response, the dispatcher shall immediately call the investigator on their cellular telephone.
- If there is no response after making attempts via the radio and cellular telephone, dispatchers will immediately request the local law enforcement agency to respond and check on the investigator. Additionally, the supervising investigator of the day will be notified.
- Safety checks can be initiated or requested by any investigator.

800.11 VICTIM / WITNESS / PRISONER TRANSPORTATION

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Investigators shall notify OCPD by radio in all cases when transporting a victim/witness/prisoner. When transporting subjects, the investigator shall advise the location of the transportation, the intended destination, the type of transportation (witness/victim/prisoner) and the starting mileage. The dispatcher shall document this information on the CAD log and provide the starting time to the investigator.

The investigator will advise when they have arrived at their destination and give their ending mileage. The dispatcher shall document this information on the CAD log and provide the ending time to the investigator.

800.12 EMERGENCY RADIO ACTIVATION

Emergency radio activation occurs when the emergency button is activated from your hand-held radio. All activations shall be treated in the same manner as an “emergency” or “officer needs assistance” call.

The radio designator number of the radio (same as call sign) being used for the emergency activation will appear on the OCPD console, if the PTT (push to talk button) is depressed. If the PTT button is not depressed after the Emergency Activation, then Control One will notify OCPD of the emergency activation.

OCPD will immediately verify with the investigator whether they require emergency assistance or if the emergency activation was unintentional. OCPD or Control One will coordinate the appropriate assistance, depending on the circumstances advised by the investigator. If the investigator does not respond by radio, then OCPD will attempt to telephone the investigator via the cellular phone. If unintentional, immediately advise over the hand held radio "Code 4, accidental".

In the event of an emergency, OCPD will notify the supervising investigator of the day.

To clear the emergency activation, notify OCPD on the same frequency that it was an accidental activation. Additionally, the orange emergency button on the hand-held radio needs to be reset. To reset the button, press down on the orange button for a few seconds until a single tone is heard.

800.13 CONFIDENTIAL INFORMATION

Investigators should be aware that the Bureau will be sharing the same frequency with Orange County Probation and their radios could be potentially overheard in the juvenile custody facilities, in vehicles used to transport juveniles from one facility to another or to work locations. Exercise caution and good judgement when providing information to field units over the radio. Employee telephone numbers, addresses, etc. should never be provided over the radio.

Investigators in the field shall obtain this confidential information over a secured telephone line.

800.14 SURVEILLANCE/PSU SPECIAL EVENTS

Investigator(s) engaged in an activity, such as a surveillance or special event that requires prolonged radio transmissions shall contact Control One to obtain a secondary frequency to be used for that specific

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event and/or activity. Channel DA Green 1 will still be available to all investigators for operations, but the channel will not be monitored by a dispatcher. Investigators shall advise OCPD that they will be switching to another frequency for their surveillance/special event.

800.15 PROPER USE OF RADIO COMMUNICATIONS

The Bureau radio system is for official use only, to be used by dispatchers to communicate with Bureau members in the field. All transmissions shall be professional and made in a calm, businesslike manner, using proper language and correct procedures. Such transmissions shall include, but are not limited to:

- a. Members acknowledging the dispatcher with their radio identification call signs and current location.
- b. Dispatchers acknowledging and responding promptly to all radio transmissions.
- c. Members keeping the dispatcher advised of their status and location.
- d. Member and dispatcher acknowledgements shall be concise and without further comment unless additional information is needed.

The Professional Standards Division shall be notified of radio procedure violations or other causes for complaint. All complaints and violations will be investigated and reported to the complainant's supervisor and processed via the chain of command.

800.15.1 RADIO IDENTIFICATION

Members should use their call signs when initiating communication with the dispatcher. The use of the call sign allows for a brief pause so that the dispatcher can acknowledge the appropriate Bureau member. Members initiating communication with other law enforcement or support agencies shall use their entire radio call sign, which includes the Bureau station name or number, which is Station 19.

Property and Evidence

801.1 PURPOSE AND SCOPE

This policy provides information for the proper collection, storage, and security of evidence and other property. Additionally, this policy provides for the protection of the chain of evidence and those persons authorized to remove, release, or destroy property. This policy should be used in conjunction with the Evidence Procedure Manual.

801.1.1 DEFINITIONS

Definitions related to this policy include:

Property - All articles placed in secure storage within the Property and Evidence Unit, including the following:

- Evidence - Items taken or recovered in the course of an investigation that may be used in the prosecution of a case, including photographs and latent fingerprints.
- Found property - Items found by members of the Bureau or the public that have no apparent evidentiary value and where the owner cannot be readily identified or contacted.
- Safekeeping - Items received by the Bureau for safekeeping, such as a firearm, the personal property of an arrestee not taken as evidence, and items taken for safekeeping under authority of law.

801.2 POLICY

It is the policy of the Orange County District Attorney's Bureau of Investigation to process and store all property in a manner that will protect it from loss, damage, or contamination, while maintaining documentation that tracks the chain of custody, the location of property, and its disposition.

801.3 PROPERTY HANDLING

Any member who first comes into possession of any property shall retain such property in their possession until it is properly tagged and placed in the designated property locker or storage room along with the property form. Care shall be taken to maintain the chain of custody for all evidence.

Whenever property is taken or received (e.g., relinquished firearms) from an individual, a property receipt form will be completed. The receipt shall describe the property and contain a notice on how to retrieve the property, as applicable, from the Bureau. A copy of the property receipt form shall be given to the individual from whom the property was taken or received.

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Where ownership can be established as to found property with no apparent evidentiary value, such property may be released to the owner without the need for booking. The property form must be completed to document the release of property not booked and the owner shall sign the form acknowledging receipt of the items.

801.3.1 PROPERTY BOOKING PROCEDURE

All property must be booked prior to the member going off-duty unless otherwise approved by a supervisor. Members booking property shall observe the following guidelines:

1. Enter the property into the Records Management System (RMS) describing each individual item of property, listing all serial numbers, owner's name, finder's name, and other identifying information or markings.
 1. Item number should be in sequential order.
 2. Indicate in the RMS if the property was obtained by means of a search warrant. If property was obtained by means of a search warrant, upload, at minimum, a copy of the search warrant face page along with the search warrant return. This will be utilized for the proper disposition of property when necessary.
2. Properly package each item (box, bag, envelope, etc.), seal with evidence or packaging tape, initial, and date over the tape.
 1. Attach a completed evidence label or tag, depending on the item being booked, to each individual item of property. Every item booked should have its own individual label or tag.
3. Place all property items being booked in a temporary property locker.
4. Supervisors should confirm that all property or evidence has been listed on the report and property intake has been completed prior to approving any related reports.

801.3.2 NARCOTICS AND DANGEROUS DRUGS

- a. All narcotics and dangerous drugs, or substances believed to be dangerous, including prescription drugs, shall be weighed and booked separately using separate property packaging. Paraphernalia, as defined by Health and Safety Code § 11364, shall also be booked separately. Refer to the [Property Procedure Manual](#) for special handling and further details.

801.3.3 EXPLOSIVES

Investigators who encounter a suspected explosive device shall promptly notify their immediate supervisor or the commander. The bomb squad will be called to handle explosive-related incidents and will be responsible for the handling, storage, sampling and disposal of all suspected explosives.

Explosives will not be retained in the Bureau facility. Only fireworks that are considered stable and safe, and road flares, or similar signaling devices, may be booked into property. All such items shall be stored

Property and Evidence

in proper containers and in an area designated for the storage of flammable materials. The property technician is responsible for transporting to the Fire Department, on a regular basis, any fireworks or signaling devices that are not retained as evidence.

801.4 PACKAGING OF PROPERTY

Certain property items require special consideration and shall be booked as follows:

- a. US and foreign currency shall be booked in a Bureau Currency Security Bag. The booking officer needs to specify the number of each item contained in the bag (e.g., two (2) twenty dollar bills, five (5) quarters, etc.).
- b. All Bureau Currency Security Bags shall contain two signatures; booking investigator as well as additional personnel, verifying the amount booked.
 1. Any dollar amount less than \$500.00 requires the signature of an additional investigator verifying the amount indicated on the Currency Security Bag.
 2. Any dollar amount exceeding \$500.00 requires the signature of a supervisor verifying the amount indicated on the Currency Security Bag.
- c. Firearms shall be rendered safe prior to packaging in a specified box appropriate for the type of weapon.
- d. Any jewelry should be packaged separately and properly identified by color / description (e.g., one watch with a yellow metal band, one white metal ring with a clear stone, etc.).

801.4.1 PACKAGING CONTAINER

Investigators shall package all property in a suitable container available for its size. Gun boxes should be used to package guns, both handguns and long guns. Currency, both US and foreign, shall be packaged in the Bureau Currency Security Bag.

A property label shall be securely attached to the outside of all items or group of items packaged together or items too large to be packaged (e.g. bicycle, computer, etc.).

Refer to the [Property Procedures Manual](#) for further information, located on the [DA Intranet](#).

801.4.2 DISPUTED CLAIMS TO PROPERTY

Occasionally, more than one party may claim an interest in property being held by the Bureau, and the legal rights of the parties cannot be clearly established. Such property shall not be released until one party has obtained a valid court order or other undisputed right to the involved property.

All parties should be advised that their claims are civil and, in extreme situations, legal counsel for the Bureau may wish to file an interpleader (Code of Civil procedures § 386(b)) to resolve the disputed claim.

801.5 PROPERTY CONTROL

Each time the property technician receives property or releases property to another person, he/she shall document this information on the Chain of Custody Log or in the RMS as appropriate.

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Investigators desiring the release of property, for court or any other legitimate reason, should contact the property technician at least one day prior in order to prepare the property for release.

The Chain of Custody Log is kept with the property technician. Any employee receiving property shall be responsible for its custody until it is returned to the property technician or released to another authorized person or entity.

801.5.1 RELEASE OF PROPERTY

The property technician, when requested by the investigator, may authorize the disposition or release of all evidence and property coming into the care and custody of the Bureau. If the property seized is under a search warrant, a court order detailing its disposition is required. If the property is obtained by consent, a memo detailing its disposition is required. All reasonable attempts shall be made to identify the rightful owner of found property or evidence not needed for an investigation.

Release of property shall be made upon receipt of an authorized release form, listing the name and address of the person to whom the property is to be released. The release authorization shall be signed by a judge or case investigator and must conform to the items listed on the property form or must specify the specific item(s) to be released. Release of all property shall be documented on the Evidence Release Form and the Chain of Custody shall be documented appropriately.

With the exception of firearms and other property specifically regulated by statute, found property shall be turned over to the police agency responsible for the jurisdiction of where the property was found. A declaration must be completed for found property and submitted to that police agency (Civil Code § 2080.1). Property held for safekeeping shall be held for a minimum of 90 days. During such period, the investigator shall attempt to contact the rightful owner by telephone and/or mail when sufficient identifying information is available. If the property is not claimed within the lawful timeframe, the booking investigator will authorize a release by memo or obtain a court order for destruction. Property not held for any other purpose and not claimed within 90 days after notification (or receipt, if notification is not feasible) may be auctioned to the highest bidder at a properly published public auction. If such property is not sold at auction or otherwise lawfully claimed, it may thereafter be destroyed (Civil Code § 2080.6). The final disposition of all such property shall be fully documented in related reports.

The property technician shall release the property upon proper identification being presented by the owner for which an authorized release has been received. A signature of the person receiving the property shall be recorded in the Chain of Custody Log and Evidence Release Form. The release of property shall be documented with the original case file. If some items of property have not been released, the Chain of Custody Log will remain open. Upon release, the proper entry shall be documented in the Chain of Custody Log and the Evidence Release Form; a copy will be included in the original case.

Under no circumstances shall any firearm, ammunition or magazine be returned to any individual unless and until such person presents valid identification and written notification from the California Department of Justice that conforms to the provisions of Penal Code § 33865.

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The Property and Evidence Unit should also make reasonable efforts to determine whether the person is the subject of any court order preventing the person from possessing a firearm and if so, the firearm should not be released to the person while the order is in effect.

The Bureau is not required to retain any firearm, magazine, ammunition or other deadly weapon longer than 180 days after notice has been provided to the owner that such firearm, magazine, ammunition or other deadly weapon, is available for return. At the expiration of such period, the firearm, magazine, ammunition or other deadly weapon may be processed for disposal in accordance with applicable law (Penal Code § 33875).

801.5.2 RELEASE OF FIREARMS IN DOMESTIC VIOLENCE MATTERS

Within five days of the expiration of a restraining order issued in a domestic violence matter that required the relinquishment of a firearm or ammunition, the Property Technician shall return the weapon or ammunition to the owner if the requirements of Penal Code § 33850 and Penal Code § 33855 are met, unless the firearm or ammunition is determined to be stolen, evidence in a criminal investigation, another successive order has been issued against the individual, or the individual is otherwise prohibited from possessing a firearm (Family Code § 6389(g); Penal Code § 29825.5; Penal Code § 33855).

801.5.3 RELEASE OF FIREARMS AND WEAPONS IN MENTAL ILLNESS MATTERS

Firearms, other deadly weapons, or ammunition confiscated or relinquished from an individual detained for an evaluation by a mental health professional or subject to the provisions of Welfare and Institutions Code § 8100 or Welfare and Institutions Code § 8103 shall be released or disposed of as follows:

- a. If a petition for a hearing regarding the return of a firearm or a weapon has been initiated pursuant to Welfare and Institutions Code § 8102(c), the firearm or weapon shall be released or disposed of as provided by an order of the court. If the court orders a firearm returned, the firearm shall not be returned unless and until the person presents valid identification and written notification from the California Department of Justice (DOJ) that conforms to the provisions of Penal Code § 33865.
- b. If no petition has been initiated pursuant to Welfare and Institutions Code § 8102(c) and the firearm or weapon is not retained as evidence, the Bureau shall make the firearm or weapon available for return. No firearm will be returned unless and until the person presents valid identification and written notification from the California DOJ that conforms to the provisions of Penal Code § 33865.
- c. Unless the person contacts the Bureau to facilitate the sale or transfer of the firearm to a licensed dealer pursuant to Penal Code § 33870, firearms not returned should be sold, transferred, destroyed, or retained as provided in Welfare and Institutions Code § 8102.

801.5.4 RELEASE OF FIREARMS IN GUN VIOLENCE RESTRAINING ORDER MATTERS

Firearms and ammunition that were taken into temporary custody or surrendered pursuant to a gun violence restraining order shall be returned to the restrained person upon the expiration of the order, verification that the person is not otherwise legally prohibited from possessing a firearm, and in accordance with the requirements of Penal Code § 33850 et seq. (Penal Code § 18108; Penal Code § 18120).

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If the restrained person who owns the firearms or ammunition does not wish to have the firearm or ammunition returned, they are entitled to sell or transfer title to a licensed dealer, provided that the firearms or ammunition are legal to own or possess and the restrained person has right to title of the firearms or ammunition (Penal Code § 18120).

If a person other than the restrained person claims title to the firearms or ammunition surrendered pursuant to Penal Code § 18120 and the Orange County District Attorney's Bureau of Investigation determines the person to be the lawful owner, the firearms or ammunition shall be returned in accordance with the requirements of Penal Code § 33850 et seq. (Penal Code § 18120).

Firearms and ammunition that are not claimed are subject to the requirements of Penal Code § 34000.

801.5.5 RELEASE OF FIREARMS, MAGAZINES, AND AMMUNITION

The Bureau shall not return any firearm, magazine, or ammunition taken into custody to any individual unless all requirements of Penal Code § 33855 are met.

801.6 DISPOSITION OF PROPERTY

All property not held for evidence in a pending criminal investigation or proceeding, and held for six months or longer where the owner has not been located or fails to claim the property, may be disposed of in compliance with existing laws upon receipt of proper authorization for disposal. The Property Technician shall request a disposition or status on all property which has been held in excess of 120 days, and for which no disposition has been received from a supervisor or detective.

801.6.1 DISPOSITION PROCEDURE

All cases, where property/evidence is in the custody of the Bureau, will be reviewed by the property technician every six months to one year.

801.6.2 EXCEPTIONAL DISPOSITIONS

The timing of disposition varies based on the type of case (felony or misdemeanor) and/or crime involved. The following shall apply in the disposition of property/items in the various cases:

FELONY CASES

1. Felony cases in which the defendant was found guilty, the property/evidence will be retained for two years and two months from the date of adjudication.
 1. If an appeal is filed, the property/evidence will be held until the case is final.
2. Felony cases in which the defendant pleads guilty, the property/evidence will be retained for 120 days from the date of sentencing.
3. Felony cases that have been dismissed, the case investigator and/or deputy district attorney should complete an Evidence Disposition Request Form and return to the property technician.
 1. In the event in which the deputy district attorney is requesting further investigation, the property/evidence will be retained for 180 days.

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2. In the event in which the deputy district attorney refuses to file charges, the property/evidence will be retained for 60 days.

MISDEMEANOR CASES

1. Misdemeanor cases in which the defendant was found guilty, the property/evidence will be retained for 90 days from the date of sentencing.
 1. If an appeal is filed, the property/evidence will be held until the case is final.
2. Misdemeanor cases in which the defendant pleads guilty, the property/evidence will be retained for 90 days from the date of sentencing.

Evidence/property related to the following cases will be retained indefinitely unless the assigned case investigator and/or deputy district attorney request it's release or destruction via memo or court order:

- a. Homicide cases
- b. Sexual assault cases
- c. Life sentence cases

801.6.3 DESTRUCTION OF FIREARMS AND OTHER WEAPONS

The Property and Evidence Unit supervisor or the authorized designee shall develop and maintain guidelines and procedures relating to the destruction of firearms and other weapons that includes but is not limited to the following (Penal Code § 18005):

- a. Identification of firearms and other weapons that need to be destroyed
- b. Maintenance of records of firearms and other weapons that need to be destroyed, including entry into the Automated Firearms System, as applicable, and records of the destruction and disposal of those firearms and other weapons
- c. Identification of any law enforcement agency that the Bureau contracts with or has an agreement with related to the storage or destruction of firearms or other weapons that outlines the responsibilities of this bureau and the other agency
 1. If the Bureau contracts with a third-party for destruction of firearms or other weapons, the contract must explicitly prohibit the sale of any firearm or weapon or any part or attachment to the firearm or weapon.

The Property and Evidence Unit supervisor or the authorized designee should ensure guidelines and procedures relating to the destruction of firearms and other weapons are posted on the Orange County District Attorney website (Penal Code § 18005).

801.7 UNCLAIMED MONEY

All money received by a deputy district attorney or clerk of the court in any criminal action or proceeding, the owner or owners of which are unknown, and which remains unclaimed in the possession of the deputy district attorney or clerk of the court after final judgement in the criminal action or proceeding, shall be deposited with the county treasurer. Upon the expiration of two years after the deposit, the county

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treasurer shall cause a notice pursuant to Penal Code § 1421 to be published in the county once a week for two successive weeks in a newspaper or general circulation published by the county.

801.8 PROPERTY TECHNICIAN DUTIES

The property technician is responsible for maintaining security and control in the property/evidence facility and for all items booked into OCDA custody. The property technician must ensure the integrity of property /evidence by maintaining an accurate chain of custody; securing property/evidence from theft, loss or contamination; and be able to determine the location of all items in a timely manner. Their duties also include facilitating defense evidence viewing as well as the releasing and disposal of property, according to court orders, and retention policies.

801.9 INSPECTIONS, AUDITS AND INVENTORIES

Inspections of the evidence/property facility will be randomly conducted twice a year at the direction of the Professional Standards Division commander to determine:

- a. The facility is clean and orderly.
- b. The integrity of the property/evidence is being maintained.
- c. That office provisions and policies are being followed.
- d. That property/evidence is being protected from damage or deterioration.
- e. That employee health and safety is protected.
- f. The property/evidence procedures are being used.
- g. Those items that have no further value as evidence are being promptly disposed.

Restoration of Firearm Serial Numbers

802.1 PURPOSE AND SCOPE

The primary purpose for restoring firearm serial numbers is to determine the prior owners or origin of the item from which the number has been recovered. Thus, property can be returned to rightful owners or investigations can be initiated to curb illegal trade of contraband firearms. The purpose of this plan is to develop standards, methodologies, and safety protocols for the recovery of obliterated serial numbers from firearms and other objects using procedures that are accepted as industry standards in the forensic community. All personnel who are involved in the restoration of serial numbers will observe the following guidelines. This policy complies with Penal Code § 11108.9.

802.2 PROCEDURE

Any firearm coming into the possession of the Orange County District Attorney Bureau of Investigation as evidence, found property, etc., where the serial numbers have been removed or obliterated, will be processed in the following manner:

802.2.1 PRELIMINARY FIREARM EXAMINATION

- a. Always keep the muzzle pointed in a safe direction. Be sure the firearm is UNLOADED. This includes removal of the ammunition source (i.e., the detachable magazine, contents of the tabular magazine, etc.) as well as the chamber contents.
- b. If the firearm is corroded shut or in a condition that would preclude inspection of the chamber contents, TREAT THE FIREARM AS IF IT IS LOADED! Make immediate arrangements for the rangemaster or other qualified examiner to render the firearm safe.
- c. Accurately record/document the condition of the gun when received. Note the positions of the various components such as the safety, cylinder, magazine, slide, hammer, etc. Accurately record /document cylinder chamber and magazine contents. Package the ammunition separately.
- d. If the firearm is to be processed for fingerprints or trace evidence, process before the serial number restoration is attempted. First record/document important aspects such as halos on the revolver cylinder face or other relevant evidence that might be obscured by the fingerprinting chemicals.

802.2.2 PROPERTY BOOKING PROCEDURE

Any employee taking possession of a firearm with removed/obliterated serial numbers shall book the firearm into property following standard procedures (Refer to policy § 801). The employee booking the firearm shall indicate on the property form that serial numbers have been removed or obliterated.

802.2.3 INVESTIGATOR RESPONSIBILITY

An investigator receiving a firearm where the serial number has been removed or obliterated shall arrange for the firearm to be transported to the crime lab for restoration and maintain the chain of evidence.

802.2.4 DOCUMENTATION

Restoration of Firearm Serial Numbers

Reports are prepared in order to document the chain of custody and the initial examination and handling of evidence from the time it is received/collected until it is released from the Orange County District Attorney Bureau of Investigation.

This report must include a record of the manner in which and/or from whom the firearm was received. This may appear on the request form, or property form depending on the type of evidence.

802.2.5 FIREARM TRACE

After the serial number has been restored (or partially restored) by the criminalistics laboratory, the Bureau of Investigation's property technician will complete a Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) National Tracing Center (NTC) Obliterated Serial Number Trace Request Form (ATF 3312.1-OBL) and forward the form to the NTC in Falling Waters, West Virginia or enter the data into the ATF eTrace system.

802.3 BULLET AND CASING IDENTIFICATION

Exemplar bullets and cartridge cases from the firearm, depending upon acceptance criteria and protocol, may be submitted to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) National Integrated Ballistic Information Network (NIBIN) which uses the Integrated Ballistic Identification System (IBIS) technology to search the national database and compare with ballistic evidence recovered from other crime scenes.

Computers and Digital Evidence

803.1 PURPOSE AND SCOPE

This policy establishes procedures for the seizure and storage and forensic examination of digital evidence. All evidence seized and/or processed pursuant to this policy shall be done so in compliance with clearly established Fourth Amendment and search and seizure provisions.

803.2 SEIZING COMPUTERS AND RELATED EVIDENCE

Digital evidence requires specialized training and handling to preserve its value as evidence. Investigators should be aware of the potential to inadvertently destroy information through careless or improper handling, and should utilize the most knowledgeable and available resources such as the Orange County Regional Computer Forensics Laboratory (OCRCFL) whenever possible. When seizing digital evidence and accessories, consult with and obtain the assistance from an OCRCFL Computer Forensics Examiner (CFE), or CFE from any other designated laboratory. If a CFE is not available for consultation and/or assistance, the following steps should be taken:

1. Before seizure of any digital media, photograph and document any apparent damage.
2. Do not overlook the possibility of the presence of physical evidence on or around the hardware relevant to the particular investigation (i.e., fingerprints, biological, or trace evidence).
3. If the computer is off, do not turn it on.
4. If the computer is on:
 1. Do not click on anything or examine any files.
 2. Photograph the screen, if possible, and note any programs or windows that appear to be open and running.
 3. It is generally not a good practice to review, access or open files on digital media prior to seizing.
 1. If exigent circumstances require accessing, or preview of digital media in the field, a CFE should conduct this procedure using forensically sound tools and procedures.
 2. If a CFE is not available to conduct this procedure, supervisor approval shall be required before any investigative review of the media is conducted and step 2 above should be performed first. The investigator performing a review of any digital media should document the circumstances requiring the review, the supervisor's name providing approval, the media item(s) reviewed to include the date, time and specific files accessed. This information shall also be provided to the forensic laboratory where the media will be submitted for forensic processing once seized (i.e., OCRCFL).
 4. Disconnect the power from the back of the computer box, or if a laptop, disconnect any power cable from the device and remove the battery.
5. Label each evidence item according to the Property and Evidence Policy § 801.
6. Handle each evidence item according to policy.
7. Book digital media items into evidence, following Bureau policy.

Computers and Digital Evidence

8. At minimum, investigators should document the following in related reports:
 1. Location of digital evidence and whether or not it was in operation (i.e., on or off).
 2. When possible, identify media device owner.
 3. Identify user(s) at the time of seizure and seek to obtain any user logon and/or password information, as applicable.
9. In most cases, when digital media is used as an instrument in the commission of a crime, all devices capable of storing data (i.e., hard drives, tape drives, thumb drives, SD card, CDs, DVDs, etc.) should be seized. Accessories (printers, monitors, scanner, mouse, keyboard, cables, software, and manuals) should not be seized unless as a precursor to forfeiture.
 - a. Always be mindful of the "All-In-One" computer (i.e., Apple iMac, HP Pavillion & Touchsmart, and Sony Vaio) systems, which can easily be mistaken as monitors. If there is any question about a device and a CFE is unavailable for guidance, seize the device and a determination will be made by a CFE when presented for processing.

803.2.1 BUSINESS OR NETWORKED COMPUTERS

Computers that are linked together as part of a business, or network server system requires specialized handling. Investigators should seek the assistance of OCRCFL Computer Forensics Examiners (CFEs), or other qualified CFEs who are experienced in extracting data from networked computer systems. Depending on the files requested in the legal authority governing the search (i.e., search warrant, consent or other), a CFE may be able to extract the data on-site, or they will identify which devices should be seized for later processing at the OCRCFL, or other designated facility.

803.2.2 FORENSIC EXAMINATION OF COMPUTERS

If an examination of digital media is required, the examination should be conducted using forensically sound tools, following forensically sound procedures. Digital media seized by this Bureau should be submitted to the OCRCFL, or other designated facility for forensic processing following the respective laboratory's submittal procedures. When submitting digital media for forensic processing, provide the following items:

- a. Completed [service request](#) with case related information.
- b. Copy of legal authority (i.e., search warrant, court order, signed consent, etc.)
- c. Any case specific instructions that might be helpful to the CFE.

803.3 SEIZING DIGITAL STORAGE MEDIA

Digital media should be seized and stored in a manner that will protect them from obvious damage.

- a. Do not leave seized digital media where they would be subject to excessive heat such as in a parked vehicle on a hot day.
- b. When possible, optical media (CDs, DVDs and Blu-Ray discs) should be packaged and stored inside packaging material that will provide protection from the deteriorating effects of external sources.

Computers and Digital Evidence

803.4 SEIZING PCDS

Personal communication devices such as cell phones, PDAs or other hand-held devices connected to any communication network must be handled with care to preserve evidence that may be on the device including messages, stored data and/or images.

- a. Investigators should not attempt to access, review or search the contents of such devices prior to examination by a forensic expert. Unsent messages can be lost, data can be inadvertently deleted and incoming messages can override stored messages.
- b. Do not turn the device on or off. When available, the device should be placed in a faraday bag or other protective packaging, to prevent the device from sending or receiving information from its host network.

803.5 DIGITAL EVIDENCE RECORDED BY INVESTIGATORS

Investigators handling and submitting recorded and digitally stored evidence from digital cameras and audio or video recorders will comply with these procedures to ensure the integrity and admissibility of such evidence.

803.5.1 COLLECTION OF DIGITAL EVIDENCE

Once evidence is recorded, it shall not be erased, deleted or altered in any way prior to submission. All photographs taken will be preserved regardless of quality, composition or relevance. Video and audio files will not be altered in any way.

803.5.2 SUBMISSION OF DIGITAL MEDIA

The following procedures should be followed for the preservation of digital audio and video evidence from audio recorders, cameras or other digital recording devices:

- a. Audio and video recordings created by staff for documentation and/or investigative purposes should be downloaded to a host computer and saved using case file related identifying information (For information regarding reviewing recordings, refer to § 413.7). No changes, enhancements, or other alterations should be made to the original audio or video file(s). If such enhancements are needed for investigative or court purposes, copies of the original data should be used, keeping the original media file unaltered.
- b. When duplication of digital audio, video, or photo files are conducted, care should be taken to avoid inadvertent alteration of the original media files. Bureau staff may conduct this process using computer programs resident on their work computers, or by submitting a service request along with the original media to Tech Services, the OCRCFL, or other appropriate duplication laboratory.

803.5.3 DOWNLOADING OF DIGITAL FILES

Computers and Digital Evidence

Digital information such as video or audio files recorded on devices using internal memory must be downloaded to a host computer at the earliest opportunity and saved using case file related identifying information.

803.5.4 PRESERVATION OF DIGITAL EVIDENCE

- a. Original digital media evidence should always be copied using forensically sound equipment and procedures. With the exception of audio and video files created by staff using digital audio recorders as well as video and camera equipment, all other digital media should be submitted to the OCRCFL, or other designated digital forensics laboratory for copying and/or processing in a forensically sound manner.
- b. Digital images that are enhanced to provide a better quality photograph for identification and investigative purposes must only be made from a copy of the original media.
- c. If any enhancement is done to the copy of the original, it shall be noted in the corresponding incident report.

Records Maintenance and Release

804.1 PURPOSE AND SCOPE

This policy provides guidance on the maintenance and release of Bureau records. Protected information is separately covered in the Protected Information Policy.

804.2 POLICY

The Orange County District Attorney is committed to providing public access to records in a manner that is consistent with the California Public Records Act (Government Code § 7920.000 et seq.).

804.3 CUSTODIAN OF RECORDS RESPONSIBILITIES

The Bureau Chief shall designate a Custodian of Records. The responsibilities of the Custodian of Records include but are not limited to:

- a. Managing the records management system for the Bureau, including the retention, archiving, release, and destruction of bureau public records.
- b. Maintaining and updating the bureau records retention schedule including:
 1. Identifying the minimum length of time the Bureau must keep records.
 2. Identifying the bureau division responsible for the original record.
- c. Establishing rules regarding the inspection and copying of bureau public records as reasonably necessary for the protection of such records (Government Code § 7922.525; Government Code § 7922.530).
- d. Identifying records or portions of records that are confidential under state or federal law and not open for inspection or copying.
- e. Establishing rules regarding the processing of subpoenas for the production of records.
- f. Ensuring a current schedule of fees for public records as allowed by law is available (Government Code § 7922.530).
- g. Determining how the bureau's website may be used to post public records in accordance with Government Code § 7922.545.
- h. Ensuring that all bureau current standards, policies, practices, operating procedures, and education and training materials are posted on the bureau website in accordance with Penal Code § 13650.
- i. Ensuring that public records posted on the Bureau website meet the requirements of Government Code § 7922.680 including but not limited to posting in an open format where a record may be retrieved, downloaded, indexed, and searched by a commonly used internet search application.
- j. Ensuring that a list and description, when applicable, of enterprise systems (as defined by Government Code § 7922.700) is publicly available upon request and posted in a prominent location on the Bureau's website (Government Code § 7922.710; Government Code § 7922.720).

804.4 PROCESSING REQUESTS FOR PUBLIC RECORDS

Records Maintenance and Release

Any Bureau member who receives a request for any record shall route the request to the Professional Standards Division. The Professional Standards Division will review the request to determine whether the Bureau has responsive records to the request. He or she will forward the request to the ADA for the Special Prosecutions Unit noting whether the Bureau has responsive records to the request.

804.4.1 REQUESTS FOR RECORDS

Any member of the public, including the media and elected officials, may access unrestricted records of this Bureau, during regular business hours by submitting a written and signed request that reasonably describes each record sought and paying any associated fees (Government Code § 7922.530).

The processing of requests for any record is subject to the following (Government Code § 7922.530; Government Code § 7922.535):

1. The Bureau is not required to create records that do not exist.
2. Victims of an incident or their authorized representative shall not be required to show proof of legal presence in the United States to obtain Bureau records or information. If identification is required, a current driver's license or identification card issued by any state in the United States, a current passport issued by the United States or a foreign government with which the United States has a diplomatic relationship or current Matricula Consular card is acceptable (Government Code § 7923.655).
3. Either the requested record or the reason for non-disclosure will be provided promptly, but no later than 10 days from the date of request, unless unusual circumstances preclude doing so. If more time is needed, an extension of up to 14 additional days may be authorized by the Special Prosecutions Unit or the authorized designee. If an extension is authorized, the Special Prosecutions Unit shall provide the requester written notice that includes the reason for the extension and the anticipated date of the response.
 - a. When the request does not reasonably describe the records sought, the Special Prosecutions Unit shall assist the requester in making the request focused and effective in a way to identify the records or information that would be responsive to the request including providing assistance for overcoming any practical basis for denying access to the records or information. The Custodian of Records shall also assist in describing the information technology and physical location in which the record exists (Government Code § 7922.600).
 - b. If the record requested is available on the Office website, the requester may be directed to the location on the website where the record is posted. If the requester is unable to access or reproduce the record, a copy of the record shall be promptly provided.
4. Upon request, a record shall be provided in an electronic format utilized by the Special Prosecutions Unit. Records shall not be provided only in electronic format unless specifically requested (Government Code § 7922.570; Government Code § 7922.580).
5. When a record contains material with release restrictions and material that is not subject to release restrictions, the restricted material shall be redacted and the unrestricted material released.

Records Maintenance and Release

- a. A copy of the redacted release should be maintained in the case file for proof of what was actually released and as a place to document the reasons for the redactions. If the record is audio or video, a copy of the redacted audio/video release should be maintained in the Bureau-approved media storage system and a notation should be made in the case file to document the release and the reasons for the redacted portions.
6. If a record request is denied in whole or part, the requester shall be provided a written response that includes the statutory exemption for withholding the record or facts that the public interest served by nondisclosure outweighs the interest served by disclosure. The written response shall also include the names, titles or positions of each person responsible for the denial (Government Code § 7922.000; Government Code § 7922.540).

804.5 RELEASE RESTRICTIONS

Examples of release restrictions include:

- a. Personal identifying information, including an individual's photograph; Social Security and driver identification numbers; name, address, and telephone number; and medical or disability information that is contained in any driver license record, motor vehicle record, or any Bureau record, including traffic collision reports, are restricted except as authorized by the Bureau, and only when such use or disclosure is permitted or required by law to carry out a legitimate law enforcement purpose (18 USC § 2721; 18 USC § 2722).
- b. Social Security numbers (Government Code § 7922.200).
- c. Personnel records, medical records, and similar records that would involve an unwarranted invasion of personal privacy except as allowed by law (Government Code § 7927.700; Penal Code § 832.7; Penal Code § 832.8; Evidence Code § 1043 et seq.).
 1. Peace officer personnel records that are deemed confidential shall not be made public or otherwise released to unauthorized individuals or entities absent a valid court order.
 2. The identity of any investigator subject to any criminal or administrative investigation shall not be released without the consent of the involved investigator, prior approval of the Bureau Chief, or as required by law.
- d. Victim information that may be protected by statutes, including victims of certain crimes who have requested that their identifying information be kept confidential, victims who are minors, and victims of certain offenses (e.g., sex crimes or human trafficking (Penal Code § 293)). Addresses and telephone numbers of a victim or a witness shall not be disclosed to any arrested person or to any person who may be a defendant in a criminal action unless it is required by law (Government Code § 7923.615; Penal Code § 841.5).
 1. Victims of certain offenses (e.g., domestic violence, sexual assault, stalking, human trafficking, elder and dependent adult abuse) or their representatives shall be provided, upon request and without charge, one copy of all incident report face sheets, one copy of all incident reports, a copy of any accompanying or related photographs of the victim's injuries, property damage, or any other photographs that are noted in the incident report, and a copy of 9-1-1 recordings, if any, pursuant to the requirements and time frames of Family Code § 6228.

Records Maintenance and Release

2. Victims of sexual assault, upon written request, shall be provided a free copy of the initial crime report regardless of whether the report has been closed. Personal identifying information may be redacted (Penal Code § 680.2(b)).
- e. Video or audio recordings created during the commission or investigation of the crime of rape, incest, sexual assault, domestic violence, or child abuse that depicts the face, intimate body part, or voice of a victim of the incident except as provided by Government Code § 7923.750.
- f. Information involving confidential informants, intelligence information, information that would endanger the safety of any person involved, or information that would endanger the successful completion of the investigation or a related investigation. This includes analysis and conclusions of investigating investigators (Evidence Code § 1041; Government Code § 7923.605).
 1. Absent a statutory exemption to the contrary or other lawful reason to deem information from reports confidential, information from unrestricted agency reports shall be made public as outlined in Government Code § 7923.605.
- g. Local criminal history information including but not limited to arrest history and disposition, and fingerprints shall only be subject to release to those agencies and individuals set forth in Penal Code § 13300.
 1. All requests from criminal defendants and their authorized representatives (including attorneys) shall be referred to the District Attorney, the County Counsel, or the courts pursuant to Penal Code § 1054.5.
- h. Certain types of reports involving but not limited to child abuse and molestation (Penal Code § 11167.5), elder and dependent abuse (Welfare and Institutions Code § 15633), and juveniles (Welfare and Institutions Code § 827).
- i. Sealed autopsy and private medical information concerning a murdered child with the exceptions that allow dissemination of those reports to law enforcement agents, prosecutors, defendants, or civil litigants under state and federal discovery laws (Code of Civil Procedure § 130).
- j. Information contained in applications for licenses to carry firearms or other files that indicates when or where the applicant is vulnerable or which contains medical or psychological information (Government Code § 7923.800).
- k. Traffic collision reports (and related supplemental reports) shall be considered confidential and subject to release only to the California Highway Patrol, Department of Motor Vehicles (DMV), other law enforcement agencies, and those individuals and their authorized representatives set forth in Vehicle Code § 20012.
- l. Any record created exclusively in anticipation of potential litigation involving this Office (Government Code § 7927.200).
- m. Any memorandum from legal counsel until the pending litigation has been adjudicated or otherwise settled (Government Code § 7927.205).
- n. Records relating to the security of the Office's electronic technology systems (Government Code § 7929.210).
- o. A record of a complaint, or the investigations, findings, or dispositions of that complaint if the complaint is frivolous, as defined by Code of Civil Procedure § 128.5, or if the complaint is unfounded (Penal Code § 832.7 (b)(9)).

Records Maintenance and Release

- p. Any other record not addressed in this policy shall not be subject to release where such record is exempt or prohibited from disclosure pursuant to state or federal law, including but not limited to provisions of the Evidence Code relating to privilege (Government Code § 7927.705).
- q. Information connected with juvenile court proceedings or the detention or custody of a juvenile. Federal officials may be required to obtain a court order to obtain certain juvenile information (Welfare and Institutions Code § 827.9; Welfare and Institutions Code § 827.95; Welfare and Institutions Code § 831).

804.6 RELEASED RECORDS TO BE MARKED

Each page of any written record released pursuant to this policy should be stamped in a colored ink or otherwise marked to indicate the Bureau name and to whom the record was released.

Each audio/video recording released should include the Bureau name and to whom the record was released.

804.7 DISCLOSURE OF OIS AND CUSTODIAL DEATH VIDEO & AUDIO EVIDENCE

Prior to releasing any video or audio evidence from an outside agency, please refer to the Orange County District Attorney Policy regarding video evidence in officer involved shootings and custodial death incidents. This policy can be found on the Bureau web, under OCDA Policies.

For information on releasing any video or audio evidence belonging to the Orange County District Attorney's Office, refer to Audio/Video Recorders § 413.

804.8 SEALED RECORD ORDERS

Sealed record orders received by the Bureau shall be reviewed for appropriate action by the Professional Standards Division. The Professional Standards Division shall seal such records as ordered by the court. Records may include, but are not limited to, a record of arrest, investigation, detention or conviction. Once the record is sealed, members shall respond to any inquiry as though the record did not exist (Penal Code § 851.8; Welfare and Institutions Code § 781).

804.8.1 SEALING JUVENILE RECORDS

Upon receiving notice from a probation department to seal a citation, juvenile arrest records, or other related records pursuant to Welfare and Institutions Code § 786.5, the Professional Standards Division should ensure the records are sealed within 60 days of that notice and that the probation department is notified once the records have been sealed (Welfare and Institutions Code § 786.5).

804.9 SECURITY BREACHES

Records Maintenance and Release

The Professional Standards Division commander shall ensure notice is given anytime there is a reasonable belief an unauthorized person has acquired either unencrypted personal identifying information or encrypted personal information along with the encryption key or security credential stored in any Bureau information system (Civil Code § 1798.29).

Notice shall be given as soon as reasonably practicable to all individuals, including their respective association (AOCDS / ACLEMS / OCEA) whose information may have been acquired. The notification may be delayed if the Bureau determines that notification will impede a criminal investigation or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

For the purposes of this requirement, personal identifying information includes an individual's first name or first initial and last name in combination with any one or more of the following (Civil Code § 1798.29):

- Social Security number
- Driver license number or California identification card number
- Tax identification number, passport number, military identification number, or other unique identification number issued on a government document commonly used to verify the identity of a specific individual
- Account number or credit or debit card number, in combination with any required security code, access code or password that would permit access to an individual's financial account
- Medical information
- Health insurance information
- A username or email address, in combination with a password or security question and answer that permits access to an online account
- Information or data collected by Automated License Plate Reader (ALPR) technology
- Unique biometric data
- Genetic data

804.9.1 FORM OF NOTICE

1. The notice shall be written in plain language, be consistent with the format provided in Civil Code § 1798.29 and include, to the extent possible, the following:
 1. The date of the notice.
 2. Name and contact information for the Orange County District Attorney.
 3. A list of the types of personal information that were or are reasonably believed to have been acquired.
 4. The estimated date or date range within which the security breach occurred.
 5. Whether the notification was delayed as a result of a law enforcement investigation.
 6. A general description of the security breach.

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7. The toll-free telephone numbers and addresses of the major credit reporting agencies, if the breach exposed a Social Security number or a driver license or California identification card number.
2. The notice may also include information about what the Orange County District Attorney Bureau of Investigation has done to protect individuals whose information has been breached and may include information on steps that the person whose information has been breached may take to protect him/herself (Civil Code § 1798.29).
3. When a breach involves an online account, and only a username or email address in combination with either a password or security question and answer that would permit access to an online account, and no other personal information has been breached (Civil Code § 1798.29):
 1. Notification may be provided electronically or in another form directing the person to promptly change either his/her password or security question and answer, as applicable, or to take other appropriate steps to protect the online account with the Bureau in addition to any other online accounts for which the person uses the same username or email address and password or security question and answer.
 2. When the breach involves an email address that was furnished by the Orange County District Attorney, notification of the breach should not be sent to that email address but should instead be made by another appropriate medium as prescribed by Civil Code § 1798.29.

804.9.2 MANNER OF NOTICE

1. Notice may be provided by one of the following methods (Civil Code § 1798.29):
 1. Written notice.
 2. Electronic notice if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in 15 USC § 7001.
 3. Substitute notice if the cost of providing notice would exceed \$250,000, the number of individuals exceeds 500,000 or the Bureau does not have sufficient contact information. Substitute notice shall consist of all of the following:
 - a. Email notice when the Bureau has an email address for the subject person.
 - b. Conspicuous posting of the notice on the OCDA's webpage for a minimum of 30 days.
 4. Notification to major statewide media and the California Information Security Office within the California Department of Technology.
2. If a single breach requires the Bureau to notify more than 500 California residents, the Bureau shall electronically submit a sample copy of the notification, excluding any personally identifiable information, to the Attorney General.

804.10 RELEASE OF AUDIO OR VIDEO RECORDINGS RELATED TO CRITICAL INCIDENTS

Video and audio recordings related to critical incidents shall be released upon a proper public record request and subject to delayed release, redaction, and other release restrictions as provided by law (Government Code § 7923.625).

Records Maintenance and Release

For purposes of this section, a video or audio recording relates to a critical incident if it depicts an incident involving the discharge of a firearm at a person by an investigator, or in which the use of force by an investigator against a person resulted in death or in great bodily injury (as defined by Penal Code § 243(f)(4)) (Government Code § 7923.625).

The Custodian of Records should work as appropriate with the Bureau Chief or the Professional Standards Unit supervisor in determining what recordings may qualify for disclosure when a request for a recording is received and if the requested recording is subject to delay from disclosure, redaction, or other release restrictions.

804.10.1 DELAY OF RELEASE

Disclosure of critical incident recordings during active criminal or administrative investigations may be delayed as follows if disclosure would substantially interfere with the investigation, such as by endangering the safety of a witness or a confidential source:

1. Disclosure may be delayed up to 45 days from the date the Bureau knew or reasonably should have known about the incident.
2. Delay of disclosure may continue after the initial 45 days and up to one year if the Bureau demonstrates that disclosure would substantially interfere with the investigation.
3. Any delay of disclosure longer than one year must be supported by clear and convincing evidence that disclosure would substantially interfere with the investigation (Government Code § 7923.625).

804.10.2 NOTICE OF DELAY OF RELEASE

When there is justification to delay disclosure of a recording, the Custodian of Records shall provide written notice to the requester as follows (Government Code § 7923.625):

- a. During the initial 45 days, the Custodian of Records shall provide the requester with written notice of the specific basis for the determination that disclosure would substantially interfere with the investigation. The notice shall also include the estimated date for the disclosure.
2. When delay is continued after the initial 45 days, the Custodian of Records shall promptly provide the requester with written notice of the specific basis for the determination that the interest in preventing interference with an active investigation outweighs the public interest in the disclosure, and the estimated date for the disclosure. The Custodian of Records should work with the Bureau Chief in reassessing the decision to continue withholding a recording and notify the requester every 30 days.

Recordings withheld shall be disclosed promptly when the specific basis for withholding the recording is resolved.

804.10.3 REDACTION

If the Custodian of Records, in consultation with the Bureau Chief or authorized designee, determines that specific portions of the recording may violate the reasonable expectation of privacy of a person depicted

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in the recording, the Bureau should use redaction technology to redact portions of recordings made available for release. The redaction should not interfere with the viewer's ability to fully, completely, and accurately comprehend the events captured in the recording, and the recording should not otherwise be edited or altered (Government Code § 7923.625).

If any portions of a recording are withheld to protect the reasonable expectation of privacy of a person depicted in the recording, the Custodian of Records shall provide in writing to the requester the specific basis for the expectation of privacy and the public interest served (Government Code § 7923.625).

804.10.4 RECORDINGS WITHHELD FROM PUBLIC DISCLOSURE

If the reasonable expectation of privacy of a person depicted in the recording cannot adequately be protected through redaction, and that interest outweighs the public interest in disclosure, the Bureau may withhold the recording from the public, except that the recording, either redacted or unredacted, shall be disclosed promptly, upon request, to any of the following (Government Code § 7923.625):

- a. The person in the recording whose privacy is to be protected, or the person's authorized representative.
- b. If the person is a minor, the parent or legal guardian of the person whose privacy is to be protected.
- c. If the person whose privacy is to be protected is deceased, an heir, beneficiary, designated immediate family member, or authorized legal representative of the deceased person whose privacy is to be protected.

If the Bureau determines that this disclosure would substantially interfere with an active criminal or administrative investigation, the Custodian of Records shall provide the requester with written notice of the specific basis for the determination and the estimated date of disclosure (Government Code § 7923.625).

The Bureau may continue to delay release of the recording from the public for 45 days with extensions as provided in this policy (Government Code § 7923.625).

Protected Information

805.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the access, transmission, release and security of protected information by members of the Orange County District Attorney Bureau of Investigation. This policy addresses the protected information that is used in the day-to-day operation of the Bureau and not the public records information covered in the Records Maintenance and Release Policy § 804.

805.1.1 DEFINITIONS

Definitions related to this policy include:

Protected information - Any information or data that is collected, stored or accessed by members of the Orange County District Attorney Bureau of Investigation and is subject to any access or release restrictions imposed by law, regulation, order or use agreement. This includes all information contained in federal, state or local law enforcement databases that is not accessible to the public.

805.2 POLICY

Members of the Orange County District Attorney Bureau of Investigation will adhere to all applicable laws, orders, regulations, use agreements and training related to the access, use, dissemination and release of protected information.

805.3 RESPONSIBILITIES

The Professional Standards commander or designee will coordinate the use of protected information.

The responsibilities of this position include, but are not limited to:

- a. Ensuring member compliance with this policy and with requirements applicable to protected information, including requirements for the National Crime Information Center (NCIC) system, National Law Enforcement Telecommunications System (NLETS), Department of Motor Vehicle (DMV) records and California Law Enforcement Telecommunications System (CLETS).
- b. Developing, disseminating and maintaining procedures that adopt or comply with the U.S. Department of Justice's current Criminal Justice Information Services (CJIS) Security Policy.
- c. Developing, disseminating and maintaining any other procedures necessary to comply with any other requirements for the access, use, dissemination, release and security of protected information.
- d. Developing procedures to ensure training and certification requirements are met.
- e. Resolving specific questions that arise regarding authorized recipients of protected information.

Protected Information

- f. Ensuring security practices and procedures are in place to comply with requirements applicable to protected information.

805.4 ACCESS TO PROTECTED INFORMATION

Protected information shall not be accessed in violation of any law, order, regulation, user agreement, Orange County District Attorney Bureau of Investigation policy or training. Only those members who have completed applicable training and met any applicable requirements, such as a background check, may access protected information, and only when the member has a legitimate work-related reason for such access.

Unauthorized access, including access for other than a legitimate work-related purpose, is prohibited and may subject a member to administrative action pursuant to the Personnel Complaints Policy § 1005 and /or criminal prosecution.

805.4.1 RELEASE OF CRIMINAL OFFENDER RECORD INFORMATION (CORI)

Authorized personnel releasing CORI are responsible to ensure that each request granted appears legitimate and that the requester is an authorized recipient with a right and need to know.

805.5 RELEASE OR DISSEMINATION OF PROTECTED INFORMATION

Protected information may be released only to authorized recipients who have both a right to know and a need to know.

A member who is asked to release protected information that should not be released should refer the requesting person to a supervisor or to the Division Commander for information regarding a formal request.

Unless otherwise ordered or when an investigation would be jeopardized, protected information maintained by the Bureau may generally be shared with authorized persons from other law enforcement agencies who are assisting in the investigation or conducting a related investigation. Any such information should be released through the Professional Standards Division to ensure proper documentation of the release (see the Records Maintenance and Release Policy).

805.5.1 REVIEW OF CRIMINAL OFFENDER RECORD

Individuals requesting to review their own California criminal history information shall be referred to the Department of Justice (Penal Code § 11121).

Individuals shall be allowed to review their arrest or conviction record on file with the Bureau after complying with all legal requirements regarding authority and procedures in Penal Code § 11120 through Penal Code § 11127 (Penal Code § 13321).

805.5.2 TRANSMISSION GUIDELINES

Protected Information

Protected information, such as restricted Criminal Justice Information (CJI), which includes Criminal History Record Information (CHRI), should not be transmitted via unencrypted radio. When circumstances reasonably indicate that the immediate safety of investigators, other bureau members or the public is at risk, only summary information may be transmitted.

In cases where the transmission of protected information, such as Personally Identifiable Information, is necessary to accomplish a legitimate law enforcement purpose, and utilization of an encrypted radio channel is infeasible, a bureau-issued cellular telephone should be utilized when practicable. If a cellular telephone is not available, unencrypted radio transmissions shall be subject to the following:

- Elements of protected information should be broken up into multiple transmissions, to minimally separate an individual's combined last name and any identifying number associated with the individual, from either first name or first initial.
- Additional information regarding the individual, including date of birth, home address, or physical descriptors, should be relayed in separate transmissions.

Nothing in this policy is intended to prohibit broadcasting warrant information.

805.6 SECURITY OF PROTECTED INFORMATION

The Professional Standards commander or designee will oversee the security of protected information.

The responsibilities of this position include, but are not limited to:

- a. Developing and maintaining security practices, procedures and training.
- b. Ensuring federal and state compliance with the CJIS Security Policy and the requirements of any state or local criminal history records systems.
- c. Establishing procedures to provide for the preparation, prevention, detection, analysis and containment of security incidents including computer attacks.
- d. Tracking, documenting and reporting all breach of security incidents to the Bureau Chief and appropriate authorities.

805.6.1 MEMBER RESPONSIBILITIES

Members accessing or receiving protected information shall ensure the information is not accessed or received by persons who are not authorized to access or receive it. This includes leaving protected information, such as documents or computer databases, accessible to others when it is reasonably foreseeable that unauthorized access may occur (e.g., on an unattended table or desk; in or on an unattended vehicle; in an unlocked desk drawer or file cabinet; on an unattended computer terminal).

805.7 TRAINING

Protected Information

All members authorized to access or release protected information shall complete a training program that complies with any protected information system requirements and identifies authorized access and use of protected information, as well as its proper handling and dissemination.

805.7.1 COMPUTER TERMINAL SECURITY

Computer terminal equipment capable of providing access to automated criminal offender record information is located throughout the Orange County District Attorney's Office and shall be secured to preclude access by unauthorized persons.

No employee shall be authorized to operate computer terminal equipment with access to CORI until the operator has completed the appropriate training. Use of the system is restricted to authorized individuals for official purposes only.

805.7.2 DESTRUCTION OF CORI

When any document providing CORI has served the purpose for which it was obtained, it shall be destroyed by shredding.

Each employee shall be responsible for destroying the CORI documents they receive.

805.8 TRAINING PROGRAM

All personnel authorized to process or release CORI shall be required to complete an authorized training program prescribed by the D.O.J. The Professional Standards Division shall coordinate the course to provide training in the proper use, control, and dissemination of CORI.

805.9 PENALTIES FOR MISUSE OF RECORDS

Penal Code § 11140 and 11144 make it a misdemeanor to furnish, buy, receive, or possess Department of Justice rap sheets without authorization by a court, statute, or case law.

California Administrative Code § 702, Chapter 1, Title 11 provides that authorized persons or agencies violating the "Regulations Regarding the Security of Criminal Offender Record Information in California" may lose direct access to CORI maintained by the California Department of Justice.

Divulging the content of any criminal record to anyone other than authorized personnel with a right to know and a need to know is a violation of the Bureau Policy Manual.

Employees of the Orange County District Attorney's Office Bureau of Investigation who obtain, or attempt to obtain, information from the Bureau of Investigation files other than that to which they are entitled in accordance with their official duties is a violation of the Orange County District Attorney's Office Bureau of Investigation Policy Manual.

805.10 CALIFORNIA RELIGIOUS FREEDOM ACT

OCDA Bureau of Investigation Policy Manual

Law Enforcement Policy

Protected Information

Members shall not release personal information from any agency database for the purpose of investigation or enforcement of any program compiling data on individuals based on religious belief, practice, affiliation, national origin or ethnicity (Government Code § 8310.3).

DEMAT Evidence Handling

806.1 DEMAT PURPOSE AND SCOPE

This policy provides information for the proper collection, temporary storage, and security of digital evidence received and obtained by the Digital Evidence Mapping Analysis Team (DEMAT). This policy also provides for the protection of the chain of evidence and those persons authorized in DEMAT to intake, process, or release digital evidence. This policy should be used in conjunction with the Evidence Procedure Manual if long term storage of evidence is required.

806.2 DEFINITIONS

Monolith Forensics – Monolith Forensics is a full-featured software platform purposely built and designed for digital forensics case management and temporary evidence handling for digital forensics labs.

Temporary Evidence – Includes items waiting to be digitally examined and processed by DEMAT, which were taken or recovered during an investigation that may be used in the prosecution of a case.

Temporary Evidence Storage Cabinet – Is a secured, locked cabinet located in the DEMAT Lab and intended for temporary storage of evidence being processed.

Charging Cabinet – Is a secured, locked USB Charging Station located in the DEMAT Lab intended to temporarily store devices waiting to be processed or forensically accessed, ensuring continuous power is maintained to the device.

AFU – After First Unlock (AFU) is the state of a digital device that has been unlocked at least once after it was powered on.

BFU – Before First Unlock (BFU) is the state of a digital device that has been turned off or rebooted and has yet to be unlocked by entering the correct screen lock passcode.

Evidence COC Report – An Evidence Chain of Custody (COC) Report consists of details of the case identified by a DEMAT Case Number and Evidence Number, to include the Intake and Release of the digital evidence. This report is intended to be provided to the person delivering the digital evidence and/or evidence that is released to a person, as their copy of the digital evidence handled by DEMAT.

Personal Protective Equipment (PPE) – Is the equipment worn to minimize exposure to a variety of hazards. PPE examples include such items as gloves, footwear (shoe covers), eye protection (goggles), masks or respirators, and full body suits.

806.3 DIGITAL EVIDENCE MAPPING ANALYSIS TEAM

DEMAT Evidence Handling

The Digital Evidence Mapping Analysis Team (DEMAT) is responsible for processing digital forensics evidence. This could be in the form of cellular devices, infotainment systems from vehicles, computers, laptops, tablets, or any electronic device requiring a digital forensics examination.

The DEMAT Lab is an access card controlled, secured lab within the Orange County District Attorney's Office (OCDA) main facility, equipped with a temporary evidence storage cabinet, and a charging cabinet for securing and charging incoming evidence before being examined. This cabinet is also used to charge and store digital evidence due to be released back to the investigating agency.

806.4 DIGITAL EVIDENCE HANDLING

All digital evidence coming into the DEMAT Lab must be booked into the Temporary Evidence Storage Cabinet or Charging Cabinet prior to the DEMAT employee going off-duty unless otherwise approved by a supervisor. Chain of custody shall be maintained at all times during the handling process.

Employees booking digital evidence shall observe the following guidelines:

- a. If a case has not been created in Monolith Forensics, create a case and complete the necessary fields. Monolith Forensics will automatically assign a DEMAT case number.
 1. Ensure how the evidence was acquired; either by means of a search warrant, exigency, consent or conditions of probation/parole.
 2. Ensure a signed copy of the search warrant, consent form or Minute Order is uploaded into Monolith Forensics under Files.
- b. After creating a case, or if a case already exists in Monolith Forensics, enter the property into the Monolith Forensics Evidence section associated with the case. Monolith Forensics will automatically assign an Evidence Number (EVI). If there are multiple digital devices, each device shall get its own Evidence Number.
 1. Use the dropdown to select the Evidence Type and provide the Item Brand, Item Name, Model Number or Service, Unique Identifiers (e.g. serial number), Size of the storage medium (in GB) if known, Linked Contacts (e.g. person making the request for assistance), the person the evidence is Associated To, and a Description of the evidence.
- c. If the digital evidence is already packaged, remove and inspect the evidence to ensure it matches what was described in the legal authority and to determine its current state (e.g. AFU or BFU).
 1. Ensure proper PPE is utilized when handling contaminated digital evidence.
 2. Depending on the state of the digital evidence, either proceed with the digital forensic examination or secure the evidence in either the Temporary Evidence Cabinet or Charging Cabinet.
 - a. Personnel shall thoroughly document in Monolith Forensics how the evidence came into the DEMAT Lab to include the packaging description (opened or sealed), in a powered ON/OFF state, as well the condition of the device to include any visible damage.

DEMAT Evidence Handling

3. If immediately examined, once the examination is completed, secure the digital evidence in the Temporary Evidence Storage Cabinet to await return to the originating agency /investigator.
 4. If the processing of the digital evidence will not immediately occur, properly (re)package each item (box, bag, envelope, etc.), seal with evidence or packaging tape, initial and date over the tape.
 5. Attach an Evidence COC Report to the item(s) for proper case association.
- d. During the intake and release process, ensure the date and time are properly captured within Monolith Forensics and the specific case in question and, if able, ensure an electronic signature is captured for the Custody From person and the Custody To person.
1. If you are unable to obtain an electronic signature (e.g. you're in the field at a tow yard), ensure you properly document in the Intake/Release Notes section as to why an electronic signature was not obtained.
- e. DEMAT should not retain or book evidence for long-term storage and the Temporary Evidence Storage Cabinet and Charging Cabinet are not intended to house evidence permanently. An exception for housing digital evidence for a long period of time is when a device is waiting to be forensically accessed (e.g. password cracking or future device support). In these cases, the digital evidence shall be secured in the Charging Cabinet and properly logged or in the Temporary Evidence Storage Cabinet.
1. Ensure this is documented in Monolith Forensics associated with the Case in question and associated with the specific digital evidence item(s).
 2. The Charging Cabinet evidence log is located on a clipboard hanging from the Charging Cabinet door. Whenever digital evidence is placed or removed from the Charging Cabinet, ensure the item(s) are properly logged.

806.5 LONG TERM STORAGE OF DIGITAL EVIDENCE

If digital evidence needs to be stored for long-term, and there is no need to maintain constant power to the digital evidence or wait for future device support, and the digital evidence cannot be returned to the originating agency, refer to Section 801.3 of the Bureau Policy Manual for proper evidence handling.

806.6 DEMAT PERSONNEL DUTIES

It is the responsibility of all personnel assigned to DEMAT to maintain security and control at all times in the DEMAT Lab, and for all items secured in the Temporary Evidence Cabinet and Charging Cabinet. All personnel must ensure the integrity of the DEMAT Lab by maintaining and documenting an accurate chain of custody within Monolith Forensics; securing property/evidence from theft, loss or contamination; and be able to determine the location of all items in a timely manner.

806.7 INSPECTIONS, AUDITS AND INVENTORIES

Inspections of the DEMAT temporary digital evidence storage cabinet and charging cabinet will be randomly conducted twice a year at the direction of the DEMAT supervising investigator to determine:

DEMAT Evidence Handling

- a. The DEMAT Lab is clean and orderly.
- b. The integrity of the digital evidence is being maintained.
- c. That office provisions and policies are being followed.
- d. That digital evidence is being protected from damage or deterioration.
- e. That employee health and safety is protected.
- f. That digital evidence procedures are being used.
- g. Those items that have no further value as evidence are being promptly returned to the originating agency/investigator.

Chapter 9 - Custody

Custodial Searches and Phone Calls

900.1 PURPOSE AND SCOPE

This policy provides guidance regarding searches of individuals in custody. Such searches are necessary to eliminate the introduction of contraband, intoxicants, or weapons into jail facilities. Such items can pose a serious risk to the safety and security of Bureau members, individuals in custody, contractors, and the public.

Guidance for custody searches when transporting a person in custody may be found in the Transporting Persons in Custody Policy.

The Orange County District Attorney's Bureau of Investigation shall follow all policies and procedures of the Orange County Sheriff's Department relating to booking procedures when booking prisoners into the Orange County Jail.

Nothing in this policy is intended to prohibit the otherwise lawful collection of evidence from an individual in custody.

900.1.1 DEFINITIONS

Definitions related to this policy include:

Custody search - An in-custody search of an individual and of his/her property, shoes and clothing, including pockets, cuffs and folds on the clothing, to remove all weapons, dangerous items and contraband.

Physical body cavity search - A search that includes a visual inspection and may include a physical intrusion into a body cavity. Body cavity means the stomach or rectal cavity of an individual, and the vagina of a female person.

Strip search - A search that requires an individual to remove or rearrange some or all of his/her clothing to permit a visual inspection of the underclothing, breasts, buttocks, anus or outer genitalia. This includes monitoring an individual who is changing clothes, where his/her underclothing, buttocks, genitalia or female breasts are visible.

900.2 TEMPORARY CUSTODY OF JUVENILES

When a member of the Orange County District Attorney Bureau of Investigation takes a juvenile into custody, that juvenile must be handled in a different manner than adults. Policy manual § 309 is incorporated as part of this manual and should be consulted regarding the policies and procedures for the temporary custody of juveniles.

900.3 JAIL SEARCHES

Custodial Searches and Phone Calls

Immediately upon securing weapons, investigators bringing prisoners into the County Jail Facility must search the prisoner before the investigator relinquishes control. When a prisoner has been handcuffed, the prisoner should remain handcuffed until the search is substantially completed.

In the case of female prisoners, all searches will be conducted by a female investigator or designated female employee, and the male investigator shall remain outside the closed door, but available to assist immediately. Should a female prisoner become combative, a male investigator may assist in restraining her until the appropriate search is completed.

No transgender or intersex individual shall be searched or examined for the sole purpose of determining the individual's genital status. If the individual's genital status is unknown, it may be determined during conversations with the person, by reviewing medical records, or as a result of a broader medical examination conducted in private by a medical practitioner (28 CFR 115.115).

900.4 PHYSICAL BODY CAVITY SEARCH

Physical body cavity searches shall be subject to the following (Penal Code § 4030):

- a. No individual shall be subjected to a physical body cavity search without a valid search warrant. Proper notification should be made to the division commander prior to conducting a physical body cavity search. A copy of any search warrant and the results of the physical body cavity search shall be included with the related reports and made available, upon request, to the individual or authorized representative (except for those portions of the warrant ordered sealed by a court).
- b. Only a physician, nurse practitioner, registered nurse, licensed vocational nurse or Emergency Medical Technician Level II licensed to practice in California may conduct a physical body cavity search.
- c. Except for the physician or licensed medical personnel conducting the search, persons present must be of the same sex as the individual being searched. Only the necessary bureau members needed to maintain the safety and security of the medical personnel shall be present.
- d. Privacy requirements, including restricted touching of body parts and sanitary condition requirements, are the same as required for a strip search.
- e. All such searches shall be documented, including:
 1. The facts that led to the decision to perform a physical body cavity search of the individual.
 2. The reasons less intrusive methods of searching were not used or were insufficient.
 3. The Commander's approval.
 4. A copy of the search warrant.
 5. The time, date and location of the search.
 6. The medical personnel present.
 7. The names, sex and roles of any bureau members present.
 8. Any contraband or weapons discovered by the search.
- f. Copies of the written authorization and search warrant shall be retained and shall be provided to the individual who was searched or other authorized representative upon request. A record of the time, date, place of the search, the name and sex of the person conducting the search and a

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statement of the results of the search shall also be retained and made available upon request to the individual or the individual's authorized representative.

900.5 PRISONER TELEPHONE PROCEDURE

Every prisoner, whether adult or juvenile, detained shall be entitled to at least three (3) completed calls immediately upon being booked and no later than three (3) hours after arrest as per Penal Code § 851.5. If the prisoner has been released to the custody of another agency for booking, the responsibility of ensuring the three (3) calls are completed is not that of the arresting investigator.

There is no obligation for the investigator to make a call on a prisoner's behalf (e.g., a person that is so intoxicated that he or she cannot make a call). An investigator is not required to wake an intoxicated person three hours after booking so that they may complete a call.

There is also no limitation on the amount of time a prisoner's phone call must last. A prisoner should be given sufficient time on the phone to contact whomever they desire and to arrange for necessary items because of their arrest.

900.5.1 ON-GOING TELEPHONE ACCESS

Reasonable access to a telephone, beyond those telephone calls which are required by Penal Code § 851.5 shall be accommodated. Prisoners shall be allowed to make additional phone calls upon their request as soon as practical, by providing the prisoner access to the telephone.

900.5.2 TELEPHONE CALL PROCEDURES

The county will pay the cost of local calls. Long distance calls must be paid by the prisoners using calling cards or by calling collect.

Calls between the prisoner and his attorney shall be deemed confidential and shall not be monitored, eavesdropped upon or recorded.

900.6 JUVENILES

No juvenile should be subjected to a strip search or a physical body cavity search at the Bureau.

The Bureau Chief or the authorized designee should establish procedures for the following:

- a. Safely transporting a juvenile who is suspected of concealing a weapon or contraband, or who may be experiencing a medical issue related to such concealment, to a medical facility or juvenile detention facility as appropriate in the given circumstances.
 1. Procedures should include keeping a juvenile suspected of concealing a weapon under constant and direct supervision until custody is transferred to the receiving facility.
- b. Providing investigators with information identifying appropriate medical and juvenile detention facilities to which a juvenile should be transported for a strip or body cavity search.

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Nothing in this section is intended to prevent an investigator from rendering medical aid to a juvenile in emergency circumstances (see the Medical Aid and Response Policy for additional guidance).

Transporting Persons in Custody

902.1 PURPOSE AND SCOPE

This policy provides guidelines for transporting persons who are in the custody of the Orange County District Attorney.

See the Handcuffing and Restraints Policy for additional guidance.

902.2 POLICY

It is the policy of the Orange County District Attorney to provide safe, secure, and humane transportation for all persons in custody.

902.3 INVESTIGATOR RESPONSIBILITIES

Persons in custody should be transported in a vehicle properly equipped to transport passengers. They should be appropriately restrained and positioned during transport.

Investigators transporting a person in custody should:

- a. Search all areas of the vehicle accessible to a person in custody before and after each transport.
- b. Immediately search persons in custody after arrest, when receiving the person from the custody of another investigator, and before transferring the person. Refer to the Custodial Searches Policy before conducting any search other than a field search.
 1. Whenever practicable, a search should be conducted by an investigator of the same gender as the person being searched. If an investigator of the same gender is not reasonably available, a witnessing investigator should be present during the search.
- c. Provide Dispatch with any required notifications (e.g., start time, mileage, end time).
- d. Properly secure all property.
- e. Use audio/video equipment (when properly equipped) to observe and record any person in custody during transport (see the Body-Worn Camera policy for additional guidance).
- f. Make a reasonable effort to prevent inappropriate conversations between persons being transported (e.g., demeaning or insulting language) or conversations between a person being transported and someone outside the vehicle.
- g. Plan travel times and routes to avoid situations that might impede transportation (e.g., heavy traffic, unfavorable road conditions, extreme weather) when reasonably practicable.
- h. Make a verbal welfare check with a person in custody at least every 10 minutes. Provide sufficient visual observation and audio communication during the transport of:
 1. Individuals in auxiliary restraints.
 2. Individuals in leg restraints.
 3. Individuals wearing a spit hood.
 4. Individuals who are a suspected suicide risk.

Transporting Persons in Custody

- i. Verify that the vehicle's security devices (e.g., window and rear-door child-safety locks) are activated.
- j. Assess uncooperative persons who cannot or will not sit upright for a medical condition (see the Medical Aid and Response Policy for additional guidance):
 - 1. If no medical condition exists, alternative transportation should be arranged (e.g., a special transport van).

902.4 TRANSPORT RESTRICTIONS

When transporting multiple persons, investigators:

- a. Should not transport persons in custody together. Persons in custody should be transported individually when practicable, or within their own compartment of a multiple-compartment vehicle, unless supervisor approval is received based on unusual circumstances.
 - 1. Juveniles and adults shall not be transported together.
 - 2. Persons with known hostilities toward each other, such as mutual combatants or rival gang members, shall not be transported together.
 - 3. Persons of different genders should not be transported together.
- b. If segregating individuals is not possible, transporting investigators should be alert to inappropriate physical or verbal contact and take appropriate action.

902.5 TRANSPORTING PERSONS IN CUSTODY WHO HAVE A DISABILITY

When transporting a person in custody who has a disability, a transporting investigator should request assistance as necessary to transport the person in a reasonable and safe manner. The transporting investigator should ensure that any special equipment (e.g., canes, wheelchairs, prosthetics) is transported to the person's destination in a way that does not threaten the safety or security of the person in custody or the investigator.

Investigators transporting a person who has a disability should consult with the person in custody and use good judgment in determining what, if any, restraining devices may be appropriate based on the person's disability to ensure the security, safety, and dignity of all persons.

902.6 TRANSPORTING ILL OR INJURED PERSONS IN CUSTODY

Except in exceptional cases where alternatives are not reasonably available, investigators shall not transport persons in custody who are unconscious, have serious injuries, or who may be seriously ill. EMS personnel shall be called to handle such transportation.

Investigators shall notify a supervisor as soon as practicable when transporting a person in custody to a hospital.

Transporting Persons in Custody

Investigators should search any person who is in custody before releasing that person to EMS for transport. An investigator should accompany any person in custody during transport in an ambulance when requested by EMS personnel, when it reasonably appears necessary to provide security, when it is necessary for investigative purposes, or when so directed by a supervisor.

Any person in custody suspected of having a communicable disease should be transported in a safe manner to limit exposure to self and others. Personal protective equipment (masks, gloves, etc.) should be utilized.

See the Medical Aid and Response Policy for additional guidance on ill or injured persons in custody.

902.7 TRANSPORTING PREGNANT PERSONS IN CUSTODY

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

Absent exceptional circumstances, persons in labor or delivery shall not be transported by investigators. EMS personnel shall be called to handle transportation.

902.8 INTERRUPTION OF TRANSPORT

Absent extraordinary circumstances, investigators should not interrupt a transport to provide emergency assistance without supervisory approval. Investigators encountering an emergency should notify Dispatch and request an appropriate response.

902.9 EXTENDED TRANSPORTS

During transports for extended durations, transporting investigators may be required to make necessary stops. With supervisory approval and due consideration for security risks and the in-custody person's health and well-being, these stops should be limited to fuel, meals, bathroom breaks, and other purposes reasonably necessary for the continuation of the transport.

902.10 PROHIBITIONS

When transporting a person in custody, investigators should not:

- a. Use transport as a form of punishment or retaliation (e.g., intentionally rough rides, excessive heat or cold, obnoxiously loud music).
- b. Handcuff a person to any part of a vehicle.
- c. Leave the vehicle unattended with the person in custody in the vehicle.
- d. Allow any person who is not in custody (e.g., friend, family member) to have contact with or be in close proximity to the person in custody.

Transporting Persons in Custody

- e. Allow any food, drink, or other consumables to be given to the person in custody by anyone other than Bureau personnel or receiving agency personnel.
- f. Stop to conduct any personal activities.
- g. Engage in a pursuit.

902.11 ESCAPES

In the event that a person in custody escapes while being transported, the transporting investigator should immediately advise Dispatch and/or Control 1 and other units of the escape, provide a description of the escapee, notify their supervisor, and submit a written report as soon as practicable describing the circumstances of the escape and any recapture.

The supervisor should notify their Commander or the authorized designee upon learning of an escape.

If an escape occurs, the investigator should notify the appropriate agency or agencies within the jurisdiction where the escape occurred.

902.12 DOCUMENTATION

If a person is injured during transportation, investigators should document the injury in the appropriate report. Documentation should include the condition of the person prior to transportation and the known or suspected causes of the injury during transportation (e.g., hitting head, struggling with restraints, fighting with other persons in custody). Any visible or reported injuries should be photographed and included with the report.

902.13 NOTIFICATIONS

Investigators should notify a supervisor and any receiving facility of information regarding any circumstances the investigator reasonably believes would be potential safety concerns or medical risks to the person (e.g., uncooperative or violent, prolonged struggle, extreme agitation, medical conditions) that may have occurred prior to, or during, transportation.

Chapter 10 - Personnel

Recruitment and Selection

1000.1 PURPOSE AND SCOPE

This policy provides a framework for employee recruiting efforts and identifying job-related standards for the selection process. This policy supplements the rules that govern employment practices for the Orange County District Attorney Bureau of Investigation and that are promulgated and maintained by Human Resources.

In the event there is conflict or inconsistency, this policy will govern.

1000.2 POLICY

In accordance with applicable federal, state and local law, the Orange County District Attorney Bureau of Investigation provides equal opportunities for applicants and employees, regardless of actual or perceived race, ethnicity, gender identity or expression, age, disability, pregnancy, religion, creed, national origin, ancestry, genetic information, veteran status, marital status, sex, sexual orientation, or any other protected class or status. The Bureau does not show partiality or grant any special status to any applicant, employee, or group of employees unless otherwise required by law.

The Bureau will recruit and hire only those individuals who demonstrate a commitment to service and who possess the traits and characteristics that reflect personal integrity and high ethical standards.

1000.3 RECRUITMENT

Human Resources, in conjunction with the Professional Standards Division, should employ a comprehensive recruitment and selection strategy to recruit and select employees from a qualified and diverse pool of candidates.

The strategy should include:

- a. Identification of racially and culturally diverse target markets.
- b. Use of marketing strategies to target diverse applicant pools.
- c. Expanded use of technology and maintenance of a strong internet presence. This may include an interactive OCDA website and the use of OCDA-managed social networking sites, if resources permit.
- d. Expanded outreach through partnerships with media and community groups.

Human Resources, in conjunction with the Professional Standards Division, shall avoid advertising, recruiting and screening practices that tend to stereotype, focus on homogeneous applicant pools or screen applicants in a discriminatory manner.

The Bureau should strive to facilitate and expedite the screening and testing process, and should periodically inform each candidate of their status in the recruiting process.

Recruitment and Selection

1000.4 SELECTION PROCESS

The Bureau shall actively strive to identify a diverse group of candidates who have in some manner distinguished themselves as being outstanding prospects. Minimally, the Bureau should employ a comprehensive screening, background investigation, and selection process that assesses cognitive and physical abilities and includes review and verification of the following:

- a. A comprehensive application for employment (including previous employment, references, current and prior addresses, education, military record)
 1. The personnel records of any applicant with prior peace officer experience in this state shall be requested from the appropriate law enforcement agency and reviewed prior to extending an offer of employment (Penal Code § 832.12).
 2. This includes review of prior law enforcement employment information maintained by POST (Penal Code § 13510.9).
- b. Driving record
- c. Personal and professional reference checks
- d. Employment eligibility, including U.S. Citizenship and Immigration Services (USCIS) Employment Eligibility Verification Form I-9 and acceptable identity and employment authorization documents consistent with Labor Code § 1019.1. This required documentation should not be requested until a candidate is hired. This does not prohibit obtaining documents required for other purposes.
- e. Information obtained from public internet sites
 1. This review should include the identification of any activity that promotes or supports unlawful violence or unlawful bias against persons based on protected characteristics (e.g., race, ethnicity, national origin, religion, gender, gender identity, sexual orientation, disability).
- f. Financial history consistent with the Fair Credit Reporting Act (FCRA) (15 USC § 1681 et seq.)
- g. Local, state, and federal criminal history record checks
- h. Medical and psychological examination (may only be given after a conditional offer of employment)
 1. The Medical Suitability Declaration (POST form 2-363) provided by the evaluating physician shall be maintained in the candidate's background investigation file (11 CCR 1954).
 2. The Psychological Suitability Declaration (POST form 2-364) provided by the evaluator shall be maintained in the candidate's background investigation file (11 CCR 1955).
- i. Review board or selection committee assessment
- j. Relevant national and state decertification records, if available, including the National Decertification Index

1000.4.1 VETERAN'S PREFERENCE

Veterans, as defined in § 18540.4 and 18541 of the Government Code, who apply for county employment and who wish to claim veterans' status shall so indicate in the appropriate place on the application. If applicable, verification of the veterans' status will be required upon appointment. Applications of active duty veterans who intend to claim veterans' status will be accepted only within 90 days of a pending discharge.

Recruitment and Selection

Veterans will be credited five percentage points and disabled veterans will be credited ten percentage points to a passing score on a written examination in an open recruitment where the test results will be a factor in determining score group placement.

1000.5 BACKGROUND INVESTIGATION

Every candidate shall undergo a thorough background investigation to verify his/her personal integrity and high ethical standards, and to identify any past behavior that may be indicative of the candidate's unsuitability to perform duties relevant to the operation of the Orange County District Attorney Bureau of Investigation (11 CCR 1953).

The narrative report and any other relevant background information shall be shared with the psychological evaluator. Information shall also be shared with others involved in the hiring process if it is relevant to their respective evaluations (11 CCR 1953).

This policy does not apply to an employee who has been terminated and then re-instated.

1000.5.1 NOTICES

Background investigators shall ensure that investigations are conducted and notices provided in accordance with the requirements of the FCRA and the California Investigative Consumer Reporting Agencies Act (15 USC § 1681d; Civil Code § 1786.16).

1000.5.2 STATE NOTICES

If information disclosed in a candidate's criminal offender record information (CORI) is the basis for an adverse employment decision, a copy of the CORI shall be provided to the applicant (Penal Code § 11105).

1000.5.3 REVIEW OF SOCIAL MEDIA SITES

All peace officer candidates shall be subject to a social media search for statements, postings, and/or endorsements made by the candidate that are relevant to suitability for peace officer employment, including bias-relevant information consistent with the requirements of 11 CCR 1955(d)(3) and any public expression of hate made in an online forum, as defined in Penal Code § 13608(g)(11 CCR 1953(e)(12)).

Due to the potential for accessing unsubstantiated, private or protected information, the background investigator shall not require candidates to provide passwords, account information or access to password-protected social media accounts (Labor Code § 980).

The background investigator should consider utilizing the services of an appropriately trained and experienced third party to conduct open source, internet-based searches and/or review information from social media sites to ensure that:

- a. The legal rights of candidates are protected.

Recruitment and Selection

- b. Material and information to be considered are verified, accurate and validated.
- c. The Bureau fully complies with applicable privacy protections and local, state and federal law.

Regardless of whether a third party is used, the Professional Standards Division commander should ensure that potentially impermissible information is not available to any person involved in the candidate selection process.

1000.5.4 DOCUMENTING AND REPORTING

The background investigator shall summarize the results of the background investigation in a narrative report that includes sufficient information to allow the reviewing authority to decide whether to extend a conditional offer of employment. The report shall include sections that summarize relevant Background Investigation Dimensions and include any findings of behaviors, traits, and/or attributes relevant to bias per the Bias Assessment Framework as described in the POST Background Investigation Manual. The report shall identify the data sources reviewed for the findings, regardless of weight given. The report shall include narrative information in the format described in 11 CCR 1953(g)(1). The report shall also include whether the candidate has engaged or is engaging in membership in a hate group, participation in hate group activity, or advocacy or public expressions of hate, pursuant to Penal Code § 13680 et seq. (11 CCR 1953).

The report shall not include any information that is prohibited from use, including that from social media sites, in making employment decisions. The report and all supporting documentation including relevant documentation of bias-related findings and documentation obtained through the social media search shall be included in the candidate's background investigation file (11 CCR 1953).

The background investigator shall document proof of verification of qualification for peace officer appointment on the Verification of Qualification for Peace Officer Appointment form and forward to the Administration Division Commander for final review and submission to POST (11 CCR 1953).

The background investigation file shall be made available during POST compliance inspections (11 CCR 1953).

1000.5.5 RECORDS RETENTION

The background report and all supporting documentation shall be maintained according to the established records retention schedule and at a minimum as follows (Government Code § 12946; 11 CCR 1953):

- a. Reports and documentation for candidates hired by the Bureau shall be retained for the entire term of employment and a for a minimum of four years after separation from the Bureau.
- b. Reports and documentation for candidates not hired by the Bureau for a minimum of four years.

1000.5.6 BACKGROUND INVESTIGATION UPDATE

Recruitment and Selection

A background investigation update may, at the discretion of the Bureau Chief, be conducted in lieu of a complete new background investigation on a peace officer candidate who is reappointed within 180 days of voluntary separation from the Orange County District Attorney, or who is an interim police chief meeting the requirements contained in 11 CCR 1953(f).

1000.5.7 INVESTIGATOR TRAINING

Background investigators shall complete POST-certified background investigation training prior to conducting investigations (11 CCR 1953; 11 CCR 1959).

1000.5.8 CONFIDENTIAL POST RECORDS

Records released to the Bureau from POST that were previously withheld from the candidate by POST shall be kept confidential as provided in Penal Code § 13510.9.

1000.6 DISQUALIFICATION GUIDELINES

As a general rule, performance indicators and candidate information and records shall be evaluated by considering the candidate as a whole, and taking into consideration the following:

- Age at the time the behavior occurred
- Passage of time
- Patterns of past behavior
- Severity of behavior
- Probable consequences if past behavior is repeated or made public
- Likelihood of recurrence
- Relevance of past behavior to public safety employment
- Aggravating and mitigating factors
- Other relevant considerations

A candidate's qualifications will be assessed on a case-by-case basis, using a totality-of-the-circumstances framework.

1000.7 EMPLOYMENT STANDARDS

All candidates shall meet the minimum standards required by state law (Government Code § 1029; Government Code § 1031; Penal Code § 13510.1; 11 CCR 1950 et seq.). Candidates will be evaluated based on merit, ability, competence and experience, in accordance with the high standards of integrity and ethics valued by the Bureau and the community. The California Commission on Peace Officer Standards and Training (POST) developed a Job Dimensions list, which is used as a professional standard in background investigations.

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Validated, job-related and nondiscriminatory employment standards shall be established for each job classification and shall minimally identify the training, abilities, knowledge and skills required to perform the position's essential duties in a satisfactory manner. Each standard should include performance indicators for candidate evaluation. Human Resources should maintain validated standards for all positions.

1000.7.1 STANDARDS FOR INVESTIGATORS

Candidates shall meet the minimum standards established by POST or required by state law (Government Code § 1029; Government Code § 1031; 11 CCR 1950 et seq.):

1. Free of any felony convictions
2. Be legally authorized to work in the United States under federal law
3. At least 21 years of age except as provided by Government Code § 1031.4
4. Fingerprinted for local, state, and national fingerprint check
5. Good moral character as determined by a thorough background investigation (11 CCR 1953)
6. High school graduate, passed the GED or other high school equivalency test, or obtained a two-year, four-year, or advanced degree from an accredited or approved institution
7. Free from any physical, emotional, or mental condition, including bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation which might adversely affect the exercise of police powers (11 CCR 1954; 11 CCR 1955)
8. Free of hate group memberships, participation in hate group activities, or advocacy of public expressions of hate within the previous seven years, and since 18 years of age, as determined by a background investigation (Penal Code § 13681)
9. Candidates must also satisfy the POST selection requirements, including (11 CCR 1950 et seq.):
 1. Reading and writing ability assessment (11 CCR 1951)
 2. Oral interview to determine suitability for law enforcement service (11 CCR 1952)
10. POST certification that has not been revoked, denied, or voluntarily surrendered pursuant to Penal Code § 13510.8(f)
11. Not identified in the National Decertification Index of the International Association of Directors of Law Enforcement Standards and Training or similar federal government database that reflects revoked certification for misconduct or reflects misconduct that would result in a revoked certification in California.

In addition to the above minimum POST required standards, candidates may be subjected to additional standards established by the Bureau (Penal Code § 13510(d)).

Transfer Policy

1001.1 PURPOSE AND SCOPE

The purpose of this policy is to establish required and desirable qualifications for transfers within the ranks /positions of the Orange County District Attorney's Office Bureau of Investigation.

1001.2 ASSIGNMENT PREFERENCE

Each calendar year, all 830.1 PC and 830.35 PC investigators and investigative assistants will be asked to submit an assignment preference memo. Memos will be submitted to the Professional Standards Division via the chain of command. Any request made on the memo does not infer a desire to be transferred or that transfers are upcoming. Adjustments to individual preference may be made at any time throughout the year by simply re-submitting another memo to the Professional Standards Division via the chain of command.

Assignment preference memos are reviewed and considered by command staff when making assignment decisions. The department will take into consideration all three positions submitted on the preference memo while making and determining transfers. However, it does not guarantee or infer that members of the Bureau will be transferred to any of the three units listed on the memo. It also does not guarantee that the member will remain in their current assignment if they choose to list it as their number one (1) choice. All transfers are made based upon the current and future needs of the organization and at the Chief's or the Chief designees' discretion.

If a member does not submit an assignment preference memo or refuses to do so, the last assignment preference memo on file will remain active. A member will not be disciplined for not submitting or refusing to submit an assignment preference memo as requested.

The assignments available for transfer will be sent out to Bureau members via email in a memo format from the Professional Standards Division. The memo will include all assignments available to 830.1 and 830.35 PC investigators, 830.1 and 830.35 PC supervising investigators. If an assignment is not listed as an available assignment, investigators should not indicate it as a desired preference.

Not all assignments in the Bureau will be included due to the fact assignments such as Organized Crime, OCATT, DEA Taskforce, RCFL, Cyber Crimes, and US Marshal's Taskforce are only available when a vacancy or the need arises. Should a vacancy or the need arise for one of the previously mentioned assignments, the Chief or designee will announce an opening to Bureau members, via email in a memo format. The memo will include desired experience and qualifications required depending on the assignment.

Transfers shall not be made for purposes of punishment absent a final notice of discipline.

1001.3 COLLATERAL ASSIGNMENTS

Transfer Policy

The following positions are considered collateral assignments and are not considered promotions:

- a. Range Staff
- b. Dignitary Protection Team
- c. Threat Assessment Team
- d. ACT Instructor (Arrest and Control Techniques)
- e. Taser Instructor
- f. GRIP 2 (Gang Reduction Intervention and Partnership)

When a vacancy becomes available, a memo will be sent via email to investigators announcing the opening. Included in that memo will be desired qualifications and/or training for the assignment. Selections will be decided upon by the Chief or designee.

Reporting of Employee Convictions

1002.1 PURPOSE AND SCOPE

Convictions of certain offenses may restrict or prohibit an employee's ability to properly perform official duties. Therefore, all employees shall be required to promptly notify the Bureau of any misdemeanor or felony convictions after being hired.

The Professional Standards Division supervisor, or designee, shall submit in a timely manner a notice to the Commission on Peace Officer Standards and Training (POST) of any appointment, termination, reinstatement, name change or status change regarding any peace officer, reserve peace officer, public safety dispatcher and records supervisor employed by this Bureau (11 CCR 1003).

The Professional Standards Division supervisor, or designee, shall submit in a timely manner a notice to POST of a felony conviction or Government Code § 1029 reason that disqualifies any current peace officer employed by this Bureau or any former peace officer if this Bureau was responsible for the investigation (11 CCR 1003).

1002.2 DOMESTIC VIOLENCE CONVICTIONS, OUTSTANDING WARRANTS AND RESTRAINING ORDERS

California and federal law prohibit individuals convicted of, or having an outstanding warrant for, certain offenses and individuals subject to certain court orders from lawfully possessing a firearm. Such convictions and court orders often involve allegations of the use or attempted use of force or threatened use of a weapon on any individual in a domestic relationship (e.g., spouse, cohabitant, parent, child) (18 USC § 922; Penal Code § 29805).

All members are responsible for ensuring that they have not been disqualified from possessing a firearm by any such conviction or court order and shall promptly report any such conviction or court order to a supervisor, as provided in this policy.

1002.3 OTHER CRIMINAL CONVICTIONS AND COURT ORDERS

With limited exceptions, Government Code § 1029 prohibits any person convicted of a felony from being a peace officer in the State of California. This prohibition applies regardless of whether the guilt was established by way of a verdict, guilty or nolo contendere plea.

Convictions of certain violations of the Vehicle Code and other provisions of law may also place restrictions on an employee's ability to fully perform the duties of the job.

Outstanding warrants as provided in Penal Code § 29805 also place restrictions on a member's ability to possess a firearm.

Reporting of Employee Convictions

Moreover, while legal restrictions may or may not be imposed by statute or by the courts upon conviction of any criminal offense, criminal conduct by members of this Bureau may be inherently in conflict with law enforcement duties and the public trust.

1002.4 REPORTING PROCEDURE

All members of this Bureau with an identification card issued by the Bureau shall promptly notify their immediate supervisor in writing of any misdemeanor or felony arrest, outstanding warrant or conviction regardless of whether or not the matter is currently on appeal and regardless of the penalty or sentence, if any.

All members with an identification card issued by the Bureau shall further promptly notify their immediate supervisor in writing if the member becomes the subject of a domestic violence restraining order or similar court order or becomes the subject of an outstanding warrant.

Any member whose criminal conviction unduly restricts or prohibits that member from fully and properly performing his/her duties may be disciplined including, but not limited to, being placed on administrative leave, reassignment and/or termination. Any effort to remove such disqualification or restriction shall remain entirely the responsibility of the member on his/her own time and expense.

Any member failing to provide prompt written notice pursuant to this policy shall be subject to discipline.

1002.5 PROCEDURE FOR RELIEF

Pursuant to Penal Code § 29855, a peace officer may petition the court for permission to carry a firearm following a conviction under state law. Federal law, however, does not provide for any such similar judicial relief and the granting of a state court petition under Penal Code § 29855 will not relieve one of the restrictions imposed by federal law. Therefore, relief for any employee falling under the restrictions imposed by federal law may only be obtained by expungement of the conviction. Each employee shall seek relief from firearm restrictions on their own time and through their own resources.

Pursuant to Family Code § 6389(h), an individual may petition the court for an exemption to any restraining order, which would thereafter permit the individual to carry a firearm or ammunition as a part of their employment. Relief from any domestic violence or other restriction shall also be pursued through the employee's own resources and on the employee's own time.

Pending satisfactory proof of relief from any legal restriction imposed on an employee's duties, the employee may be placed on administrative leave or reassigned. The Bureau shall reinstate the employee to their previous assignment upon presentation of satisfactory proof of relief from any legal restriction set forth in this policy.

Drug- and Alcohol-Free Workplace

1003.1 PURPOSE AND SCOPE

The purpose of this policy is to establish clear and uniform guidelines regarding drugs and alcohol in the workplace (41 USC § 8103).

1003.2 DEFINITIONS

Screening Test - The compulsory production and submission of urine/blood by an employee, in accordance with Bureau procedures, for chemical analysis to detect the presence or absence of controlled substances or alcohol.

Medical Review Officer (MRO) - Designated by and works for the contract laboratory. The contract laboratory and collection site shall be mutually agreed upon by the Bureau of Investigation and AOCDS or OCEA.

1003.3 POLICY

It is the policy of this Bureau to provide a drug and alcohol-free workplace for all members.

1003.3.1 PURCHASE OR POSSESSION OF DRUGS OR ALCOHOL ON-DUTY

Employees shall not purchase or possess alcohol or other controlled substances on County property, at work, or while on duty except in the performance of a special assignment as described in § 1003.5.

1003.3.2 USE OF PRESCRIBED MEDICATIONS

Any employee who is required to take any medication with side effects which impairs his/her ability to fully and safely perform all requirements of the position shall immediately notify their supervisor. The employee will then be referred to County Health Services. No employee shall be permitted to work or drive a Bureau-owned, Bureau-leased or their personal vehicle (for work-related purposes and while on duty) while taking such potentially impairing medication without a written release from his/her physician.

Bureau members do not have to disclose the name(s) of the medication or their medical condition, diagnosis, or prognosis to the Bureau.

Bureau members are prohibited from possessing, using or being impaired by marijuana or THC while on duty or on Bureau, District Attorney or County property. These prohibitions extend to medical marijuana.

1003.4 GENERAL GUIDELINES

Alcohol and illegal drug use in the workplace or on Bureau time can endanger the health and safety of Bureau members and the public. Such use shall not be tolerated (41 USC § 8103).

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Members who have consumed an amount of an alcoholic beverage or taken any medication, or combination thereof, that would tend to adversely affect their mental or physical abilities shall not report for duty. Affected members shall notify their appropriate supervisor or commander as soon as the member is aware that he/she will not be able to report to work. If the member is unable to make the notification, every effort should be made to have a representative contact the supervisor in a timely manner. If the member is adversely affected while on-duty, he/she shall be immediately removed and released from work (see § 1003.7).

1003.5 MEMBER RESPONSIBILITIES

Members shall report for work in an appropriate mental and physical condition. Members are prohibited from purchasing, manufacturing, distributing, dispensing, possessing or using controlled substances or alcohol on Bureau premises or on Bureau time (41 USC § 8103), except as provided in 1003.5.1. The lawful possession or use of prescribed medications or over-the-counter remedies, except medical marijuana, are excluded from this prohibition.

Members who are authorized to consume alcohol as part of a special assignment shall not do so to the extent of unduly impairing on-duty performance.

Members shall notify a supervisor immediately if they observe behavior or other evidence that they believe demonstrates that a fellow member poses a risk to the health and safety of the member or others due to drug or alcohol use.

1003.5.1 MARIJUANA AND THC

Bureau members are prohibited from possessing, using or being impaired by marijuana or THC while on duty or on Bureau, District Attorney or County property. These prohibitions extend to medical marijuana.

The Bureau will not discriminate against a member for marijuana or THC use off the job and away from County, District Attorney or Bureau property, or where an employer required drug screening finds nonpsychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids.

The above non-discrimination does not apply to members working in positions or assignments which require a federal government background investigation or security clearance, or where the member's position or assignment requires licensing or certification which comes with a legal obligation to undergo drug testing for marijuana or THC.

Members may also be disciplined if their marijuana or THC use impacts their ability to possess a firearm under federal law and their classification is authorized to carry a firearm while on duty (see for example 18 USC 922 (g)(3)).

1003.6 EMPLOYEE ASSISTANCE PROGRAM

There may be available a voluntary employee assistance program to assist those who wish to seek help for alcohol and drug problems (41 USC § 8103). Insurance coverage that provides treatment for drug and

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alcohol abuse also may be available. Employees should contact the Department of Human Resources, their insurance providers or the employee assistance program for additional information. It is the responsibility of each employee to seek assistance before alcohol or drug problems lead to performance problems.

Sworn members of the Bureau may contact AOCDS for a referral to a mental health law enforcement specialty professional at no cost to the member. All communications with the mental health law enforcement specialty professional are confidential, separate and apart from the Bureau and the County.

1003.7 WORK RESTRICTIONS

If a member informs a supervisor that he/she has consumed any alcohol, drug or medication that could interfere with a safe and efficient job performance, the member may be required to obtain clearance from his/her physician before continuing to work.

If the supervisor reasonably believes, based on objective facts, that a member is impaired by the consumption of alcohol or other drugs, the supervisor shall prevent the member from continuing work and shall ensure that he/she is safely transported away from the Bureau.

1003.8 SCREENING TESTS

A supervisor may require an employee to submit to a screening under any of the following circumstances:

- a. The supervisor reasonably believes, based upon objective facts, that the employee is under the influence of alcohol or drugs that are impairing the employee's ability to perform duties safely and efficiently.

A supervisor may request an employee to submit to a screening under any of the following circumstances:

- a. The employee discharges a firearm in the performance of the employee's duties (excluding training or authorized euthanizing of an animal).
- b. The employee discharges a firearm issued by the Bureau while off-duty, resulting in injury, death, or substantial property damage.
- c. The employee drives a motor vehicle in the performance of the employee's duties and becomes involved in an incident that results in bodily injury, death, or substantial damage to property.

1003.8.1 SUPERVISOR RESPONSIBILITY

The supervisor, in conjunction with Human Resources, shall prepare a written record documenting the specific facts that led to the decision to request the test, and shall inform the employee in writing of the following:

- a. The test will be given to detect either alcohol or drugs, or both.
- b. The result of the test is not admissible in any criminal proceeding against the employee.
- c. The employee may refuse the test, but refusal may result in dismissal or other disciplinary action.

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1. If an investigator is involved in an on-duty or off-duty officer involved shooting or on-duty traffic collision, they are not subject to dismissal or other disciplinary action if they refuse to submit to a screening test.

1003.8.2 COLLECTION SITE PRIVACY AND SECURITY

- a. Collection site facilities will provide privacy for the test employee.
- b. For urine sample testing, the employee shall be provided two authorized specimen bottles. Specimen bottle "A" shall be used by the laboratory for screening and confirmatory tests. Specimen bottle "B" shall be maintained for the employee. The employee may, upon a confirmed positive test, utilize specimen "B" as a challenge to the results of specimen "A" with another authorized SAMHSA laboratory.
- c. For urine sample testing, a minimum of 50 milliliters (1.7 fluid ounces) must be provided or the specimen will be considered incomplete. If there is an insufficient amount of urine (less than 50 milliliters) in the specimen bottles, additional urine shall be collected. The employee shall be asked to drink fluids to aid in urination and shall be allowed a reasonable amount of time to furnish additional urine.
- d. Any oral fluid drug testing will be conducted pursuant to guidelines set forth in 49 CFR parts 40.47, 40.73-40.74 and 40.91-93.

1003.8.3 CHAIN OF CUSTODY

Test specimens shall be stored and transported using the same documented chain of custody and standard of care and safety applied to evidence.

1003.8.4 TEST RESULTS

- a. In the case of a negative test result, the laboratory shall discard remaining portions of specimens, forward a report of the negative test to the MRO and destroy accompanying documents and log sheets.
- b. Upon confirmation of a positive test result, the MRO shall confer with the employee. When the MRO is satisfied there is no alternative explanation for the positive test, the assistant chief will be immediately advised. The assistant chief will forward the information to the Bureau Chief.
- c. After taking a screening test that indicates the presence of a controlled substance, the member has 72 hours after being requested, to show proof that he/she took the controlled substance as directed, pursuant to a current and lawful prescription issued in his/her name.

1003.9 COMPLIANCE WITH THE DRUG-FREE WORKPLACE ACT

No later than 30 days following notice of any drug statute conviction for a violation occurring in the workplace involving a member, the Bureau will take appropriate action against the employee, up to and including dismissal, and/or requiring the member to satisfactorily participate in a drug abuse assistance or rehabilitation program (41 USC § 8104).

1003.10 CONFIDENTIALITY

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The Bureau recognizes the confidentiality and privacy due to its members.

The written results of any screening tests are considered confidential medical records and shall be maintained separately from the member's personnel files.

All documents generated by the employee assistance program are confidential and will be maintained by the employee assistance program. Disclosure by the employee assistance program of any information relating to the employee assistance program (including but not limited to documents) shall only be provided with the express written consent of the member involved or pursuant to lawful process.

Smoking and Tobacco Use

1004.1 PURPOSE AND SCOPE

This policy establishes limitations on smoking and the use of tobacco products by members and others while on-duty or while in Orange County District Attorney Bureau of Investigation facilities or vehicles.

For the purposes of this policy, smoking and tobacco use includes, but is not limited to, any tobacco product, such as cigarettes, cigars, pipe tobacco, snuff, tobacco pouches and chewing tobacco, as well as any device intended to simulate smoking, such as an electronic cigarette or personal vaporizer.

1004.2 POLICY

The Orange County District Attorney Bureau of Investigation recognizes that tobacco use is a health risk and can be offensive to others.

Smoking and tobacco use also presents an unprofessional image for the Bureau and its members. Therefore smoking and tobacco use is prohibited by members and visitors in all Bureau facilities, buildings and vehicles, and as is further outlined in this policy (Government Code § 7597; Labor Code § 6404.5).

1004.3 SMOKING AND TOBACCO USE

Smoking and tobacco use by members is prohibited anytime members are in public view representing the Orange County District Attorney Bureau of Investigation.

Personnel Complaints

1005.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of this Bureau. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

1005.2 POLICY

The Orange County District Attorney Bureau of Investigation takes seriously all complaints regarding the service provided by the Bureau and the conduct of its members.

The Bureau will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state and local law, municipal and county rules and the requirements of any collective bargaining agreements.

It is also the policy of this Bureau to ensure that the community can report misconduct without concern for reprisal or retaliation.

1005.2.1 FALSE COMPLAINT ADMONITION

Every person making a complaint in person shall be instructed to carefully read and sign the admonitions on the Personnel Complaint Form addressing consequences of filing a false complaint pursuant to Penal Code §148.6 and Civil Code § 47.5.

If the person refuses to sign the admonition, the supervisor should indicate "refused to sign" and initial the appropriate signature block. A refusal to sign shall not, by itself, be considered grounds for rejecting a complaint, but may be taken into consideration when determining the manner in which the matter should be handled.

If the complaint is received by telephone, the receiving supervisor should read the admonitions to the complainant and sign the signature block with a notation of the date and time read. If the complainant later appears in person, a second form should be completed and signed by the individual. Every effort should be made to have the complainant complete and sign the Citizens Complaint Form.

1005.3 PERSONNEL COMPLAINTS

Personnel complaints include any allegation of misconduct or improper job performance that, if true, would constitute a violation of Bureau policy or of federal, state or local law, policy or rule. Personnel complaints may be generated internally or by the public.

Inquiries about conduct or performance that, if true, would not violate Bureau policy or federal, state or local law, policy or rule may be handled informally by a supervisor and shall not be considered a

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personnel complaint. Such inquiries generally include clarification regarding policy, procedures or the response to specific incidents by the Bureau and will not be considered personnel records or stored in the employee's drop file.

Written inquiries shall be purged as soon as possible.

1005.3.1 COMPLAINT CLASSIFICATIONS

Personnel complaints shall be classified in one of the following categories:

Informal - A matter in which the complaining party is satisfied that appropriate action has been taken by a supervisor of rank greater than the accused member. Informal complaints need not be documented on a Personnel Complaint Form and shall not result in action beyond verbal counseling.

Formal - A matter in which a commander determines that further action is warranted. Such complaints may be investigated by a supervisor of rank greater than the accused member or referred to the commander of the Professional Standards Division, depending on the seriousness and complexity of the investigation.

Incomplete - A matter in which the complaining party either refuses to cooperate or becomes unavailable after diligent follow-up investigation. At the discretion of the assigned Commander or the Commander of the Professional Standards Division, such matters may be further investigated depending on the seriousness of the complaint and the availability of sufficient information.

1005.3.2 SOURCES OF COMPLAINTS

The following applies to the source of complaints:

- a. Individuals from the public may make complaints in any form, including in writing, by email, in person or by telephone.
- b. Any Bureau member becoming aware of alleged misconduct shall immediately notify a supervisor.
- c. Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action.
- d. Anonymous and third-party complaints should be accepted and investigated to the extent that sufficient information is provided.
- e. Tort claims and lawsuits may generate a personnel complaint.

1005.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

1005.4.1 COMPLAINT FORMS

Personnel Complaint Forms will be available at all times through the Bureau of Investigation Officer of the Day. Copies of these forms are maintained at the Reception Desk/Front Counter and in the Professional Standards Division.

1005.4.2 ACCEPTANCE

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All complaints will be courteously accepted by any Bureau member and promptly given to the appropriate supervisor. Although written complaints are preferred, a complaint may also be filed orally, either in person or by telephone. Such complaints will be directed to a supervisor. If a supervisor is not immediately available to take an oral complaint, the receiving member shall obtain contact information sufficient for the supervisor to contact the complainant. The supervisor, upon contact with the complainant, shall complete and submit a complaint form as appropriate.

Although not required, complainants should be encouraged to file complaints in person so that proper identification, signatures, photographs or physical evidence may be obtained as necessary.

A complainant shall be provided with a copy of the complaining party's statement at the time it is filed with the Bureau (Penal Code § 832.7).

1005.4.3 AVAILABILITY OF WRITTEN PROCEDURES

The Bureau shall make available to the public a written description of the investigation procedures for complaints (Penal Code § 832.5).

1005.5 DOCUMENTATION

Supervisors shall ensure that all formal complaints are documented on a complaint form. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

The number of formal citizen complaints should be documented in a way that will allow the Professional Standards Division to submit a required Annual Report of Citizens' Complaints Against Peace Officers to the California Department of Justice. The information documented shall include the type of complaint (non-criminal, misdemeanor or felony) and the disposition of each complaint (sustained, exonerated, not sustained or unfounded).

1005.6 ADMINISTRATIVE INVESTIGATIONS

Allegations of misconduct will be administratively investigated as follows.

1005.6.1 SUPERVISOR RESPONSIBILITIES

In general, the primary responsibility for the investigation of a personnel complaint shall rest with the member's immediate supervisor, unless the supervisor is the complainant, or the supervisor is the ultimate decision-maker regarding disciplinary action or has any personal involvement regarding the alleged misconduct. The Bureau Chief or the authorized designee may direct that another supervisor investigate any complaint.

A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation.

The responsibilities of supervisors include, but are not limited to:

1. Ensuring that upon receiving or initiating any formal complaint, a complaint form is completed.

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1. The original complaint form will be directed to the Commander of the accused member, via the chain of command, who will take appropriate action and/or determine who will have responsibility for the investigation.
2. In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a supervisor shall orally report the matter to the member's Division Commander or the Bureau Chief, who will initiate appropriate action.
2. Responding to all complaints in a courteous and professional manner.
3. Resolving those personnel complaints that can be resolved immediately.
 1. Follow-up contact with the complainant should be made within 24 hours of the Bureau receiving the complaint.
 2. If the matter is resolved and no further action is required, the supervisor will note the resolution on a complaint form and forward the form to the Commander.
4. Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Commander and Bureau Chief are notified via the chain of command as soon as practicable.
5. Promptly contacting the Human Resources manager and the Professional Standards Commander for direction regarding their roles in addressing a complaint that relates to sexual, racial, ethnic or other forms of prohibited harassment or discrimination.
6. Forwarding unresolved personnel complaints to the Professional Standards Commander, who will determine whether to contact the complainant or assign the complaint for investigation.
7. Informing the complainant of the investigator's name and the complaint number within three days after assignment.
8. Investigating a complaint as follows:
 1. Making reasonable efforts to obtain names, addresses and telephone numbers of witnesses.
 2. When appropriate, ensuring immediate medical attention is provided and photographs of alleged injuries and accessible uninjured areas are taken.
9. Ensuring that the procedural rights of the accused member are followed (Government Code § 3303 et seq.).
10. Ensuring interviews of the complainant are generally conducted during reasonable hours.

1005.6.2 ADMINISTRATIVE INVESTIGATION PROCEDURES

Whether conducted by a supervisor or a member of the Professional Standards Division, in conjunction with the Human Resources manager, the following applies to members covered by the Public Safety Officers Procedural Bill of Rights Act (POBR) (Government Code § 3303):

- a. Interviews of a member shall be conducted during reasonable hours and preferably when the member is on-duty. If the member is off-duty, he/she shall be compensated.
- b. Unless waived by the member, interviews of a member shall be at the Orange County District Attorney's Office or other reasonable and appropriate place.
- c. No more than two interviewers should ask questions of a member.

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- d. Prior to any interview, a member shall be informed of the nature of the investigation, the name, rank and command of the investigator in charge of the investigation, the interviewing officers and all other persons to be present during the interview.
- e. All interviews shall be for a reasonable period and the member's personal needs should be accommodated.
- f. No member should be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers. Any member refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.
- g. A member should be given an order to answer questions in an administrative investigation that might incriminate the member in a criminal matter only after the member has been given a Lybarger advisement and after the investigator has consulted with the prosecuting agency.
- h. The interviewer shall record all interviews of members and witnesses. The member may also record the interview. If the member has been previously interviewed, a copy of that recorded interview shall be provided to the member prior to any subsequent interview.
- i. All members subjected to interviews that could result in discipline have the right to have an uninvolved representative present during the interview.
- j. All members shall provide complete and truthful responses to questions posed during interviews.
- k. No member may be requested or compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation (Government Code § 3307).

No investigation shall be undertaken against any investigator solely because the investigator has been placed on a prosecutor's Brady notification or the name of the investigator may otherwise be subject to disclosure pursuant to Brady v. Maryland. However, an investigation may be based on the underlying acts or omissions for which the investigator has been placed on a Brady notification or may otherwise be subject to disclosure pursuant to Brady v. Maryland (Government Code § 3305.5).

1005.6.3 DISPOSITIONS

Each personnel complaint shall be classified with one of the following dispositions:

Unfounded - When the investigation discloses that the alleged acts did not occur or did not involve Bureau members. Complaints that are determined to be frivolous will fall within the classification of unfounded (Penal Code § 832.8).

Exonerated - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

Not sustained - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.

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Sustained - A final determination by an investigating agency, commission, board, hearing officer, or arbitrator, as applicable, following an investigation and opportunity for an administrative appeal pursuant to Government Code § 3304 and Government Code § 3304.5 that the actions of an investigator were found to violate law or Bureau policy (Penal Code § 832.8).

If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations.

1005.6.4 COMPLETION OF INVESTIGATIONS

Every investigator or supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation within one year from the date of discovery by an individual authorized to initiate an investigation (Government Code § 3304).

In the event that an investigation cannot be completed within one year of discovery, the assigned investigator or supervisor shall ensure that an extension or delay is warranted within the exceptions set forth in Government Code § 3304(d) or Government Code § 3508.1.

1005.6.5 NOTICE TO COMPLAINANT OF INVESTIGATION STATUS

The member conducting the investigation should provide the complainant with periodic updates on the status of the investigation, as appropriate.

1005.7 ADMINISTRATIVE SEARCHES

Lockers and storage spaces may only be administratively searched in the member's presence, with the member's consent, with a valid search warrant or where the member has been given reasonable notice that the search will take place (Government Code § 3309). Assigned lockers, storage spaces and other areas, including desks, offices and vehicles, may be searched as part of an administrative investigation upon a reasonable suspicion of misconduct.

Any unlocked area, within an office or cubicle may be searched any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio or other document or equipment.

1005.7.1 DISCLOSURE OF FINANCIAL INFORMATION

An employee may be compelled to disclose personal financial information under the following circumstances (Government Code § 3308):

- a. Pursuant to a state law or proper legal process.
- b. Information exists that tends to indicate a conflict of interest with official duties.
- c. If the employee is assigned to or being considered for a special unit with a strong potential for bribes or other improper inducements may be offered.

1005.8 ADMINISTRATIVE LEAVE

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When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Bureau, with the approval of the District Attorney, or designee, the Bureau Chief, or authorized designee, may temporarily assign an accused employee to administrative leave. Any employee placed on administrative leave:

- a. May be required to relinquish any Bureau badge, identification, assigned weapons and any other Bureau equipment.
- b. Shall be required to continue to comply with all policies and lawful orders of a supervisor.
- c. Administrative leave is hours actually worked and the employee shall be required to remain available for contact at all times during normal business hours and will report as ordered.

1005.9 CRIMINAL INVESTIGATION

Where a Bureau member is accused of potential criminal conduct, a separate supervisor or investigator shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

The Bureau Chief shall be notified as soon as practicable when a member is accused of criminal conduct. The District Attorney or Bureau Chief may request a criminal investigation by an outside law enforcement agency.

A member accused of criminal conduct shall be advised of his/her constitutional rights (Government Code § 3303(h)). The member should not be administratively ordered to provide any information in the criminal investigation.

The Orange County District Attorney may release information concerning the arrest of any member, including an investigator, that has not led to a conviction. No disciplinary action should be taken until an independent administrative investigation is conducted.

1005.10 POST-ADMINISTRATIVE INVESTIGATION PROCEDURES

Upon completion of a formal investigation, the investigation report should be forwarded to the Professional Standards Division Commander. The Professional Standards Division Commander will be responsible for scheduling a meeting with members of the Disciplinary Review Board, which will consist of the following: All Bureau Commanders and the Human Resources manager. Upon meeting and review of the Internal Affairs investigation, the Disciplinary Review Board will recommend discipline to the Assistant Chief, if any, to be imposed.

In the event disciplinary action is proposed, the Human Resources manager shall provide the member with a pre-disciplinary (notice of intent) procedural due process hearing (Skelly) by providing written notice of the charges, proposed action and reasons for the proposed action. Written notice shall be provided within one year from the date of discovery of the misconduct (Government Code § 3304(d)). The Human Resources manager shall also provide the member with the following:

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1. Access to all of the materials considered by the Disciplinary Review Board in recommending the proposed discipline.
2. An opportunity to respond orally or in writing to the assigned Skelly officer within five days of receiving the notice.
 1. Upon a showing of good cause by the member, the Human Resources manager may grant a reasonable extension of time for the member to respond.
 2. If the member elects to respond orally, the presentation may be recorded by the Bureau. Upon request, the member shall be provided with a copy of the recording.

1005.10.1 NOTICE OF FINAL DISPOSITION TO THE COMPLAINANT

The Bureau Chief or the authorized designee shall ensure that the complainant is notified of the disposition (i.e., sustained, not sustained, exonerated, unfounded) of the complaint (Penal Code § 832.7 (f)).

1005.10.2 NOTICE REQUIREMENTS

The disposition of any civilian's complaint shall be released to the complaining party within 30 days of the final disposition. This release shall not include what discipline, if any, was imposed (Penal Code § 832.7 (f)).

Sections 1005.11 through 1005.14 of this manual apply only to sworn Bureau members. For all non-sworn Bureau members, please refer to your applicable Memorandum of Understanding for information/guidance regarding the previously specified sections.

1005.11 PRE-DISCIPLINE EMPLOYEE RESPONSE

The pre-discipline process is intended to provide the accused member with an opportunity to present a written or oral response to the Skelly officer after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline. The member shall consider the following:

- a. The response is not intended to be an adversarial or formal hearing.
- b. Although the member may be represented by an uninvolved representative or legal counsel, the response is not designed to accommodate the presentation of testimony or witnesses.
- c. The member may suggest that further investigation could be conducted or the member may offer any additional information or mitigating factors for the Skelly officer to consider.
- d. In the event that the Skelly officer elects to cause further investigation to be conducted, the member shall be provided with the results prior to the imposition of any discipline.
- e. The member may thereafter have the opportunity to further respond orally or in writing to the Skelly officer on the limited issues of information raised in any subsequent materials.

Once the member has completed his/her response or if the member has elected to waive any such response, the Skelly officer shall consider all information received in regard to the recommended discipline. The Skelly officer shall render a timely decision to the member via the Human Resources

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Manager and specify the effective date of the discipline, if any is to be imposed. A copy of the notice of intent will be included.

1005.12 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE

In the event that a member tenders a written resignation or notice of retirement prior to the imposition of discipline, it shall be noted in the file. The tender of a resignation or retirement by itself shall not serve as grounds for the termination of any pending investigation or discipline.

A former member shall be given notice of the notation or adverse comment and a chance to response in writing consistent with Government Code § 3305 and § 3306.

Investigations will be completed without the recommendation of discipline, if any.

1005.13 POST-DISCIPLINE APPEAL RIGHTS

Members have the right to appeal punitive action as well as a denial of promotion on grounds other than merit (Government Code § 3304(b)). Punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment (Government Code § 3303). The member has the right to appeal using the procedures established by any collective bargaining agreement, Memorandum of Understanding and/or personnel rules.

During any administrative appeal, evidence that an investigator has been placed on a Brady index or is otherwise subject to Brady restrictions may not be introduced unless the underlying allegations of misconduct have been independently established. Thereafter, such Brady evidence shall be limited to determining the appropriateness of the penalty (Government Code § 3305.5).

1005.14 RETENTION OF PERSONNEL INVESTIGATION FILES

All personnel complaints shall be maintained in accordance with the established records retention schedule and as described in the Personnel Files Policy.

1005.15 REQUIRED REPORTING TO POST

The Bureau Chief or the authorized designee shall notify POST on the appropriate POST form within 10 days of certain investigator personnel events, including but not limited to (Penal Code § 13510.9):

- a. Termination or separation from employment or appointment. Separation from employment or appointment includes any involuntary termination, resignation, or retirement.
 1. A POST affidavit-of-separation form shall be executed and maintained by the Bureau and submitted to POST as required by Penal Code § 13510.9 and § 11 CCR 1003. A peace officer who has separated from employment or appointment shall be permitted to respond to the affidavit-of-separation, in writing, to the commission, setting forth their understanding of the facts and reasons for the separation, if different from those provided by the agency (Penal Code 13510.9(d)(2)).
- b. Events that could affect an investigator's POST certification, such as:

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1. Complaints, charges, or allegations of serious misconduct (as defined by Penal Code § 13510.8).
2. Findings of civilian review boards.
3. Final dispositions of any investigations.
4. Civil judgments or court findings based on conduct, or settlement of a civil claim against an investigator or the Orange County District Attorney based on allegations of conduct by an investigator.

The Bureau Chief or the authorized designee shall be responsible for providing POST access to or duplication of investigation documentation (e.g., physical or documentary evidence, witness statements, analysis, conclusions) within the applicable timeframe provided in Penal Code § 13510.9.

1005.15.1 NOTIFICATIONS TO POST FOR SERIOUS MISCONDUCT

The Bureau Chief or the authorized designee shall report allegations of serious misconduct by an investigator to POST and the report shall include the following (11 CCR 1207):

- a. Name of the Bureau
- b. Administrative case number
- c. Name, current address, and phone number of the complainant, if available
- d. Name, POST ID, current address, and phone number of the involved investigator
- e. A summary of the alleged misconduct including:
 1. A narrative of the allegations
 2. Date and time of incidents
 3. Location of occurrence
 4. Any witness information, if available
 5. Summary of arrest or indictment of involved investigator
- f. A change in employment status of the involved investigator (e.g., administrative leave, suspension, termination)
- g. Name and contact information of the assigned investigator

The Bureau Chief or the authorized designee shall provide updates of the investigation to POST every 90 days until the final disposition in the method designated by POST (11 CCR 1207).

Upon completion of the investigation, the Bureau Chief or the authorized designee shall submit to POST the final disposition of the investigation as well as investigation materials and the investigator's service record as provided by 11 CCR 1207.

1005.15.2 ADDITIONAL NOTIFICATIONS TO POST FOR SERIOUS MISCONDUCT

Additional notification shall be made to POST (11 CCR 1207):

- a. If the imposed disciplinary action is pending appeal or other review through an administrative or judicial proceeding:
 1. The Bureau shall provide the name of the body conducting the proceeding.

Personnel Complaints

2. The status of the proceeding, if known.
- b. If criminal charges are pending:
 1. The name of the court having jurisdiction over the criminal charges against the investigator.
 2. The status of the criminal case, if known.

Seat Belts

1006.1 PURPOSE AND SCOPE

This policy establishes guidelines for the use of seat belts and child restraints. This policy will apply to all members operating or riding in Bureau vehicles (Vehicle Code § 27315.5).

Guidance for transporting persons in custody may be found in the Transporting Persons in Custody and Handcuff and Restraints policies.

1006.1.1 DEFINITIONS

Definitions related to this policy include:

Child restraint system - An infant or child passenger restraint system that meets Federal Motor Vehicle Safety Standards (FMVSS) and Regulations set forth in 49 CFR 571.213.

1006.2 POLICY

It is the policy of the Orange County District Attorney Bureau of Investigation that members use safety and child restraint systems to reduce the possibility of death or injury in a motor vehicle collision.

1006.3 WEARING OF SAFETY RESTRAINTS

All members shall wear properly adjusted safety restraints when operating or riding in a seat equipped with restraints, in any vehicle owned, leased or rented by this Bureau while on or off-duty, or in any privately owned vehicle while on-duty. The member driving such a vehicle shall ensure that all other occupants, including non-members, are also properly restrained.

Exceptions to the requirement to wear safety restraints may be made only in exceptional situations where, due to unusual circumstances, wearing a seat belt would endanger the member or the public. Members must be prepared to justify any deviation from this requirement.

1006.4 INOPERABLE SEAT BELTS

Bureau vehicles shall not be operated when the seat belt in the driver's position is inoperable. People shall not be transported in a seat in which the seat belt is inoperable.

Bureau vehicle seat belts shall not be modified, removed, deactivated or altered in any way, except by the vehicle maintenance and repair staff, who shall do so only with the express authorization of the Bureau Chief.

Members who discover an inoperable restraint system shall report the defect to the Professional Standards Division (Vehicle Maintenance § 701). Prompt action should be taken to replace or repair the system.

Seat Belts

1006.5 TRANSPORTING CHILDREN

Children under the age of 8 shall be transported in compliance with California's child restraint system requirements (Vehicle Code § 27360; Vehicle Code § 27363).

Rear seat passengers in a cage-equipped vehicle may have reduced clearance, which requires careful seating and positioning of seat belts. Due to this reduced clearance, and if permitted by law, children and any child restraint system may be secured in the front seat of such vehicles provided this positioning meets federal safety standards and the vehicle and child restraint system manufacturer's design and use recommendations. In the event that a child is transported in the front seat of a vehicle, the seat should be pushed back as far as possible and the passenger-side airbag should be deactivated. If this is not possible, members should arrange alternate transportation when feasible. A child shall not be transported in a rear-facing child restraint system in the front seat in a vehicle that is equipped with an active frontal passenger airbag (Vehicle Code § 27363).

1006.6 VEHICLE AIRBAGS

In all vehicles equipped with airbag restraint systems, the system will not be tampered with or deactivated, except when transporting children as written elsewhere in this policy. All equipment installed in vehicles equipped with airbags will be installed as per the vehicle manufacturer specifications to avoid the danger of interfering with the effective deployment of the airbag device.

Body Armor

1007.1 PURPOSE AND SCOPE

The purpose of this policy is to provide law enforcement officers with guidelines for the proper use of body armor.

1007.2 POLICY

It is the policy of the Orange County District Attorney Bureau of Investigation to maximize officer safety through the use of body armor in combination with prescribed safety procedures. While body armor provides a significant level of protection, it is not a substitute for the observance of officer safety procedures.

All Investigators shall wear a Bureau issued safety vest on duty whenever they are involved in a planned activity, including but not limited to:

- a. Service of warrants
- b. Arrest, entry and containment teams
- c. Whenever directed to by a supervisor

EXCEPTION: In cases where personnel are working in an undercover capacity and the discovery of such vest could compromise the safety of the officer, wearing a safety vest will be left at the discretion of the undercover investigator and their supervisor.

In the event an employee is temporarily unable to wear a safety vest because of a pregnancy, injury, illness or medical condition, the Bureau will attempt to reasonably accommodate the needs of the employee.

1007.3 ISSUANCE OF BODY ARMOR

The Professional Standards Division shall ensure that body armor is issued to all investigators when the investigator begins service at the Orange County District Attorney Bureau of Investigation and that, when issued, the body armor meets or exceeds the standards of the National Institute of Justice.

The Professional Standards Division shall establish a body armor replacement schedule and ensure that replacement body armor is issued pursuant to the schedule or whenever the body armor becomes worn or damaged to the point that its effectiveness or functionality has been compromised.

1007.3.1 USE OF SOFT BODY ARMOR

Generally, the use of body armor is required subject to the following:

- a. Investigators shall only wear agency-approved body armor.

OCDA Bureau of Investigation Policy Manual

Law Enforcement Policy

Body Armor

Personnel Records

1008.1 PURPOSE AND SCOPE

This policy governs maintenance and access to personnel records. Personnel records include any file maintained under an individual member's name.

1008.2 POLICY

It is the policy of this Bureau to maintain personnel records and preserve the confidentiality of personnel records pursuant to the Constitution and the laws of California (Penal Code § 832.7).

1008.3 EMPLOYEE RECORD LOCATIONS

Employee records will generally be maintained in any of the following:

Personnel File - That file which is maintained in Human Resources as a record of employment with this Bureau.

Supervisor Drop File - Any file which is separately maintained internally by an employee's supervisor(s) within an assigned division for the purpose of completing timely performance evaluations. Drop file entries may include any written comment, including current performance evaluations, made by a Bureau supervisor concerning the conduct of an employee of this Bureau. Information in this file is kept for a period of one (1) year.

Training File - Any file which documents the training records of an employee. These files are maintained by the Professional Standards Division.

Internal Affairs Files - Those files that contain complaints of employee misconduct and all materials relating to the investigation into such allegations, regardless of disposition. These files are maintained by the Professional Standards Division.

1008.4 PERSONNEL FILES DEFINED

- a. Personal data, including marital status, family members, educational and employment history, or similar information.
- b. Medical history including medical leave of absence forms, fitness for duty examinations, workers compensation records, medical releases and all other records which reveal an employee's past, current or anticipated future medical conditions. Although part of the personnel file, this specific information will remain in a separate confidential section of said file.
- c. Employee advancement, appraisal or discipline.
- d. Discipline records, including copies of sustained personnel complaints (see the Personnel Complaints Policy).

Personnel Records

1. Disciplinary action resulting from sustained internally initiated complaints or observation of misconduct shall be maintained pursuant to the established records retention schedule and at least five years (Government Code § 12946).
 2. Disciplinary action resulting from a sustained civilian's complaint involving misconduct shall be maintained pursuant to the established records retention schedule and at least 15 years (Penal Code § 832.5).
 3. A civilian's complaint involving misconduct that was not sustained shall be maintained pursuant to the established records schedule and at least five years (Penal Code § 832.5).
- e. Adverse comments such as supervisor notes or memos may be retained in the supervisor drop file after the member has had the opportunity to read and initial the comment (Government Code § 3305).
1. Once a member has had an opportunity to read and initial any adverse comment, the member shall be given the opportunity to respond in writing to the adverse comment within 30 days (Government Code § 3306).
 2. Any member response shall be attached to and retained with the original adverse comment (Government Code § 3306).
 3. If a member refuses to initial or sign an adverse comment, at least one supervisor should note the date and time of such refusal on the original comment and the member should sign or initial the noted refusal. Such a refusal, however, shall not be deemed insubordination, nor shall it prohibit the entry of the adverse comment into the member's file (Government Code § 3305).
- f. Commendations and awards.
- g. Any other information, the disclosure of which would constitute an unwarranted invasion of personal privacy.

1008.5 CONFIDENTIALITY OF PERSONNEL FILES

Pursuant to Penal Code § 832.7, all personnel records shall be deemed confidential and shall not be subject to disclosure except pursuant to the discovery procedures set forth in Evidence Code § 1043, et seq. or in accordance with applicable federal discovery laws. Nothing in this section is intended to preclude review of personnel files by the Office of the District Attorney and its counsel, within the custody and control of the Office of the District Attorney, for some relevant purpose. Further, this section shall not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office (Penal Code § 832.7(a)).

1008.6 REQUESTS FOR DISCLOSURE

Only written requests for the disclosure of any information contained in any peace officer personnel record will be considered. Since the format of such requests may be strictly governed by law with specific responses required, all such requests shall be promptly brought to the attention of the commander overseeing the Professional Standards Division, the Custodian of Records or other person charged with the maintenance of such records.

Personnel Records

Upon receipt of any such request, the Bureau shall notify the affected employee(s) by email and/or certified mail and AOCDS or ACLEM, within 10 business days of receipt that such a request has been made. The Bureau will also make a second notification, as well as release the qualified materials to the affected employee and AOCDS or ACLEM, no later than 7 business days prior to releasing the qualified materials, noting the date of release to the requesting party.

The Bureau will prepare and send a copy of the final file that is being released to AOCDS or ACLEM and make every effort to contact the retired or former employee within the above mentioned guidelines.

If the affected employee is retired or no longer works for the agency, the Bureau will notify AOCDS or ACLEM and make every effort to contact the retired or former employee within the above mentioned guidelines.

The Custodian of Record or their designee shall further ensure that an appropriate response to the request is made in a timely manner, consistent with applicable law. In many cases, this will require assistance of approved and available legal counsel.

All requests for disclosure, which result in access to an employee's personnel file(s), shall be retained in the corresponding file for a period of 5 years (Penal Code § 832.5(b)). After 5 years from the date of complaint/incident, the Bureau shall destroy such records.

1008.6.1 RELEASE OF CONFIDENTIAL INFORMATION

Except as provided by this policy or pursuant to lawful process, no information contained in any confidential peace officer personnel file shall be disclosed to any unauthorized person(s) without the express consent of the involved.

Any person who maliciously, and with the intent to obstruct justice or the due administration of the laws, publishes, disseminates, or otherwise discloses the residence address or telephone number of any member of this Bureau may be guilty of a misdemeanor (Penal Code § 146e).

Pursuant to Penal Code § 832.7(f), the disposition of any citizen's complaint shall be released to the complaining party within 30 days of the final disposition. This release shall be limited to the disposition and shall not include what discipline, if any was imposed.

Pursuant to Penal Code § 832.7(e), a department or agency that employs peace or custodial officers may release factual information concerning a disciplinary investigation if the officer who is the subject of the disciplinary investigation, or the officer's agent or representative, publicly makes a statement he or she knows to be false concerning the investigation or imposition of disciplinary action. Information may not be disclosed by the peace or custodial officer's employer unless the false statement was published by an established medium of communication, such as television, radio, or a newspaper. Disclosure of factual information by the employing agency pursuant to this subdivision is limited to facts contained in the officer's personnel file concerning the disciplinary investigation or imposition of disciplinary action that specifically refute the false statements made public by the peace or custodial officer or his or her agent or representative.

Personnel Records

1008.6.2 APPEALS

Once the Bureau has provided notification to the affected employee and AOCDS or ACLEM of a request for such records pursuant to section 1008.5, above, an appeal process will be provided to the affected employee, prior to the release of qualified materials. The affected employee and their AOCDS or ACLEM representative will have the opportunity to submit a written appeal or attend an in-person appeal hearing with the Bureau Chief and/or their designee to discuss why the materials do not qualify for release under Senate Bill 1421. The Bureau Chief and/or designee, will consult with executive legal staff prior to making a determination.

The Bureau will notify the affected employee and AOCDS or ACLEM of their decision prior to releasing the material. If it is determined that the information does not apply to be released under Senate Bill 1421, the Bureau would rescind the release of the materials to the requesting party.

1008.6.3 THREAT ASSESSMENT

If the Bureau or the affected employee(s) believes there may be a credible threat or danger in releasing such information, the Bureau will conduct a threat assessment. If it is determined a threat does exist to the affected employee(s), the Bureau will provide proper security precaution deemed necessary for the safety of the employee or former employee.

1008.7 INTERNAL AFFAIRS FILE

Internal affairs files shall be maintained under the exclusive control of the Professional Standards Division in conjunction with the office of the Bureau Chief. Access to these files may only be approved by the Bureau Chief or the Professional Standards Division commander.

These files shall contain the complete investigation of all formal complaints of member misconduct, regardless of disposition (Penal Code § 832.12). Investigations of complaints that result in the following findings shall not be placed in the member's Personnel File but will be maintained in the Internal Affairs File:

- a. Not sustained
- b. Unfounded
- c. Exonerated

Investigation files arising out of sustained civilian's complaints involving misconduct shall be maintained pursuant to the established records retention schedule and for a period of at least 15 years. Investigations that resulted in other than a sustained finding may not be used by the Bureau for punitive or promotional purposes (Penal Code § 832.5).

Investigation files arising out of internally generated complaints shall be maintained pursuant to the established records retention schedule and for at least five years (Government Code § 12946).

Personnel Records

Investigation files arising out of a civilian complaint involving misconduct that was not sustained shall be maintained pursuant to the established records retention schedule and for at least five years (Penal Code § 832.5).

Any sustained findings, later overturned at administrative appeal, should be ruled as "non-sustained" findings. For further information on what determines finalized, refer to Penal Code § 832.8.

Investigative files related to complaints which were determined to be not sustained, unfounded or exonerated at any pre-disciplinary appeal shall not be maintained in the Personnel File, but may remain in the Internal Affairs File.

1008.8 TYPES OF PERSONNEL FILES

The Bureau Personnel File can be located in any of the following places:

1008.8.1 PERSONNEL FILE

The Personnel file should contain, but is not limited to, the following:

- a. Performance evaluation reports regularly completed by a supervisor and signed by the affected employee shall be permanently maintained.
- b. Records of all training (original or photocopies of available certificates, transcripts, diplomas and other documentation) and education shall be maintained.
 1. It shall be the responsibility of the involved employee to provide the training manager or immediate supervisor with evidence of completed training/education in a timely manner.
 2. The training manager or supervisor shall ensure that copies of such training records are placed in the employee's Training file.
- c. Disciplinary action:
 1. Disciplinary action resulting from sustained internally initiated complaints or observation of misconduct shall be maintained pursuant to the established records retention schedule and at least five years (Government Code § 12946).
 2. Disciplinary action resulting from a sustained citizen's complaint involving misconduct shall be maintained pursuant to the established records retention schedule and at least fifteen years (Penal Code § 832.5).
 3. A civilian's complaint involving misconduct that was not sustained shall be maintained pursuant to the established records retention schedule and at least five years (Penal Code § 832.5).
- d. Adverse comments such as supervisor log entries may be retained in the Supervisor's Drop file after the employee has had the opportunity to read and initial the comment and for a period up to one year (Government Code § 3305).
 1. Once an employee has had an opportunity to read and initial any adverse comment prior to entry into a file, the employee shall be given the opportunity to respond in writing to such adverse comment within 30 days (Government Code § 3306).

Personnel Records

2. Any such employee response shall be attached to and retained with the original adverse comment (Government Code § 3306).
 3. If an employee refuses to initial or sign an adverse comment, at least one supervisor should note the date and time of such refusal on the original comment. Such a refusal, however, shall not be deemed insubordination nor shall it prohibit the entry of the adverse comment into the employee's file (Government Code § 3305).
- e. Commendations shall be retained in the employee's Supervisor's Drop file, with a copy provided to the involved employee.
 - f. Personnel Action Reports reflecting assignments, promotions and other changes in the employee's employment status shall be retained by the Professional Standards Division.
 - g. A photograph of the employee shall be permanently retained by the Professional Standards Division.

1008.8.2 SUPERVISOR DROP FILE

The Supervisor Drop file should contain, but is not limited to, the following:

- a. Supervisor log entries, notices to correct and other materials intended to serve as a foundation for the completion of timely performance evaluations
 1. All materials intended for this interim file shall be provided to the employee prior to being placed in the file in accordance with Government Code § 3305 and § 3306.
 2. Duplicate copies of items that will also be included in the employee's Bureau file may be placed in this interim file in anticipation of completing any upcoming performance evaluation.
 3. Once the permanent performance evaluation form has been made final, the underlying foundational material(s) and/or duplicate copies shall be purged in accordance with this policy.
- b. All rules of confidentiality and disclosure shall apply equally to the Supervisor Drop file.

1008.8.3 TRAINING FILES

An individual training file shall be maintained by the Professional Standards Division training manager for each employee. Training files will contain records of all training and education mandated by law or the Bureau, including firearms qualifications and mandated annual proficiency re-qualification.

- a. It shall be the responsibility of the involved employee to provide the training manager or immediate supervisor with evidence of completed training/education in a timely manner.
- b. The training manager or supervisor shall ensure that copies of such training records are placed in the employee's training file.

1008.9 SECURITY

Personnel records should be maintained in a secured location and locked either in a cabinet or access-controlled room. Personnel records maintained in an electronic format should have adequate password protection.

Personnel Records

Personnel records are subject to disclosure only as provided in this policy, the Records Maintenance and Release Policy or according to applicable discovery procedures.

Nothing in this policy is intended to preclude review of personnel records by the County Executive, County Counsel or other attorneys or representatives of the County in connection with official business.

1008.9.1 PURGING OF PERSONNEL FILES

Any contents of an employee's official personnel file may be destroyed pursuant to an agreement between the Chief Human Resources Officer or designee and the employee concerned or by an order of a court or impartial hearing officer unless the particular item is otherwise required by law to be kept. Refer to applicable MOU for further information.

1008.9.2 REQUESTS FOR DISCLOSURE

Any member receiving a request for a personnel record shall promptly notify the Custodian of Records (Human Resources Manager), commander of the Professional Standards Division or other person charged with the maintenance of such records.

Upon receipt of any such request, the Bureau shall notify the affected member as soon as practicable that such a request has been made (Evidence Code § 1043).

The Bureau shall further ensure that an appropriate response to the request is made in a timely manner, consistent with applicable law. In many cases, this may require assistance of available legal counsel.

1008.9.3 RELEASE OF LAW ENFORCEMENT GANG INFORMATION

Information relating to the termination of an investigator from this bureau for participation in a law enforcement gang shall be disclosed to another law enforcement agency that is conducting a pre-employment background investigation except where specifically prohibited by law (Penal Code § 13670).

1008.9.4 RELEASE OF PEACE OFFICER RECORDS RELATING TO HATE COMPLAINTS

Records relating to an investigator for an investigation of a hate complaint described in Penal Code § 13682 with a sustained finding that the investigator engaged in membership in a hate group, participated in a hate group activity, or advocacy of public expressions of hate are not confidential and shall be made available for public inspection through a public records request (Penal Code § 13683).

Records disclosed may be redacted as provided in Penal Code § 13683.

1008.10 BRADY MATERIAL IN PERSONNEL FILES

The purpose of this section is to establish a procedure for releasing potentially exculpatory information (so-called "Brady" material) contained within confidential peace officer personnel files.

1008.10.1 DEFINITIONS

Personnel Records

BRADY MATERIAL - In a landmark decision [Brady v. Maryland, 373 U.S. 83 (1963)] the United States Supreme Court held that the prosecution has an affirmative duty to disclose to the defendant evidence which is both favorable and material to the guilt and/or punishment of the defendant.

THE PROSECUTION - refers to the District Attorney and all investigative agencies involved in the criminal prosecution of a defendant, including this Bureau.

PENAL CODE § 1054.1 - California law also establishes a criminal defendants right to access potentially exculpatory evidence.

1008.10.2 RELEASE OF PERSONNEL FILES TO DISTRICT ATTORNEY

Pursuant to Penal Code § 832.7(a), the only time the Attorney General or Grand Jury is entitled to access confidential peace officer personnel files without filing a so-called "Pitchess" motion (Evidence Code §1043 et. seq.) is when they are investigating the conduct of a peace officer member or this Bureau. Such access shall not be considered a waiver of the confidentiality of the information contained in these files.

Absent a specific investigation of an identified peace officer member, a specific investigation of this Bureau, or the consent of an involved peace officer member, no confidential information from any peace officer member's personnel file shall be released to the Grand Jury (A.G. or G.J.) without full compliance with the "Pitchess" process. NOTE: The prosecution of a criminal defendant is not considered an investigation of any involved peace officer member.

Should a peace officer member's credibility or other issues related to a peace officer member's personnel file arise in the context of a peace officer member acting as a witness for the prosecution, access to that peace officer member's personnel file by either the District Attorney or the criminal defendant shall be limited to that which is authorized by the process set forth in Evidence Code §1043, et. seq.

1008.10.3 PROCEDURE

If a peace officer member is a material witness in a criminal case, a Bureau member designated by the Bureau Chief may examine the subject peace officer member's personnel file to determine whether there are Brady materials contained therein (e.g., evidence which is both favorable and material to the guilt and/or punishment of the defendant). If Brady material is located, the following shall apply:

- a. In the event that a "Pitchess" motion has not already been filed by the criminal defendant or other party, the District Attorney shall be notified of the potential presence of "Brady" material in the peace officer member's personnel file.
- b. The Bureau member reviewing the file will not share the information found in any peace officer member's personnel file with any attorney. The Bureau member reviewing the file is only responsible for providing information as to whether or not there is a potential presence of "Brady" material in the peace officer member's personnel file.

1008.11 MEMBERS' ACCESS TO THEIR PERSONNEL RECORDS

Personnel Records

Any member may request access to their own personnel records during the normal business hours of those responsible for maintaining such files. Any member seeking the removal of any item from the member's personnel records shall file a written request to the Bureau Chief through the chain of command. The Bureau shall remove any such item if appropriate, or within 30 days provide the member with a written explanation of why the contested item will not be removed. If the contested item is not removed from the file, the member's request and the written response from the Bureau shall be retained with the contested item in the member's corresponding personnel record (Government Code § 3306.5).

Members may be restricted from accessing files containing any of the following information:

- a. An ongoing internal affairs investigation to the extent that it could jeopardize or compromise the investigation pending final disposition or notice to the member of the intent to discipline.
- b. Confidential portions of internal affairs files that have not been sustained against the member.
- c. Criminal investigations involving the member.
- d. Letters of reference concerning employment/appointment, licensing, or issuance of permits regarding the member.
- e. Any portion of a test document, except the cumulative total test score for either a section of the test document or for the entire test document.
- f. Materials used by the Bureau for staff management planning, including judgments or recommendations concerning future salary increases and other wage treatments, management bonus plans, promotions and job assignments, or other comments or ratings used for department planning purposes.
- g. Information of a personal nature about a person other than the member if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy.
- h. Records relevant to any other pending claim between the Bureau and the member that may be discovered in a judicial proceeding.

1008.12 RELEASE OF PERSONNEL RECORDS AND RECORDS RELATED TO CERTAIN INCIDENTS, COMPLAINTS, AND INVESTIGATIONS OF INVESTIGATORS

Personnel records and records related to certain incidents, complaints, and investigations of investigators shall be released pursuant to a proper request under the Public Records Act and subject to redaction and delayed release as provided by law.

The Special Prosecutions Unit should work as appropriate with the Professional Standards Division in determining what records may qualify for disclosure when a request for records is received and if the requested record is subject to redaction or delay from disclosure.

For purposes of this section (1008.12), a record includes (Penal Code § 832.7(b)(3):

- All investigation reports.
- Photographic, audio, and video evidence.

Personnel Records

- Transcripts or recordings of interviews.
- Autopsy reports.
- All materials compiled and presented for review to the District Attorney or to any person or body charged with determining whether to file criminal charges against an investigator in connection with an incident, whether the investigator's action was consistent with law and bureau policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take.
- Documents setting forth findings or recommending findings.
- Copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the *Skelly* or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

For the purpose of this section (1008.12), "sustained" means a final determination by an investigating agency, commission, board, hearing officer, or arbitrator, following an investigation and opportunity for an administrative appeal pursuant to Sections 3304 and 3304.5 of the Government Code, that the actions of the peace officer member were found to violate law or departmental policy (Penal Code § 832.8(b)).

Unless a record or information is confidential or qualifies for delayed disclosure as provided by Penal Code § 832.7(b)(8) or other law, the following records (hereinafter qualifying records) shall be made available for public inspection no later than 45 days from the date of a request (Penal Code § 832.7(b)(1)):

- a. Records relating to the report, investigation, or findings of:
 1. The discharge of a firearm at another person by an investigator.
 2. The use of force against a person resulting in death or in great bodily injury (as defined by Penal Code § 243(f)(4)) by an investigator.
 3. A sustained finding involving a complaint that alleges unreasonable or excessive force.
 4. A sustained finding that an investigator failed to intervene against another investigator using force that is clearly unreasonable or excessive.
- b. Records relating to an incident where a sustained finding (see Personnel Complaints Policy) was made by the Bureau or oversight agency regarding:
 1. An investigator engaged in sexual assault of a member of the public (as defined by Penal Code § 832.7(b)).
 2. Dishonesty of an investigator relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another investigator, including but not limited to any false statements, filing false reports, destruction, falsifying, or concealing of evidence, or perjury.
 3. An investigator engaged in conduct including but not limited to verbal statements, writings, online posts, recordings, and gestures involving prejudice or discrimination against a person

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on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

4. An investigator made an unlawful arrest or conducted an unlawful search.

Qualifying records will be made available regardless of whether the investigator resigns before the Bureau or an oversight agency concludes its investigation (Penal Code § 832.7(b)(3)).

A record from a separate and prior investigation or assessment of a separate incident shall not be released unless it is independently subject to disclosure (Penal Code § 832.7(b)(4)).

When an investigation involves multiple investigators, the Bureau shall not release information about allegations of misconduct or the analysis or disposition of an investigation of an investigator unless it relates to a sustained finding of a qualified allegation as provided by Penal Code § 832.7(b)(5). However, factual information about the action of the investigator during an incident or the statements of an investigator shall be released if the statements are relevant to a finding of the qualified allegation against another investigator that is subject to release (Penal Code § 832.7(b)(5)).

1008.12.1 REDACTION

The Special Prosecutions Unit, in consultation with the Professional Standards Division, shall redact the following portions of qualifying records made available for release (Penal Code § 832.7(b)(6)):

- a. Personal data or information (e.g., home address, telephone number, identities of family members) other than the names and work-related information of investigators
- b. Information that would compromise the anonymity of whistleblowers, complainants, victims, and witnesses
- c. Confidential medical, financial, or other information where disclosure is prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about possible misconduct and use of force
- d. Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the investigator or another person

Additionally, a record may be redacted, including redacting personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosing it (Penal Code § 832.7(b)(7)).

1008.12.2 DELAY OF RELEASE

Unless otherwise directed by the Special Prosecutions Unit, in conjunction with Professional Standards Division, should consult with a supervisor familiar with the underlying investigation to determine whether to delay disclosure of qualifying records due to any of the following conditions (Penal Code § 832.7):

- a. Active criminal investigations

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1. Disclosure may be delayed 60 days from the date the misconduct or use of force occurred or until the District Attorney determines whether to file criminal charges, whichever occurs sooner.
 2. After the initial 60 days, delay of disclosure may be continued if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against an investigator or against someone other than an investigator who engaged in misconduct or used the force.
- b. Filed criminal charges
1. When charges are filed related to an incident in which misconduct occurred or force was used, disclosure may be delayed until a verdict on those charges is returned at trial or, if a plea of guilty or no contest is entered, the time to withdraw the plea has passed.
- c. Administrative investigations
1. Disclosure may be delayed until:
 - a. There is a determination from the investigation whether the misconduct or use of force violated law or Bureau policy, but no longer than 180 days after the date of the Bureau's discovery of the misconduct or use of force or allegation of misconduct or use of force

1008.12.3 NOTICE OF DELAY OF RECORDS

When there is justification for delay of disclosure of qualifying records, the Custodian of Records shall provide written notice of the reason for any delay to a requester as follows (Penal Code § 832.7):

- a. Provide the specific basis for the determination that the interest in delaying disclosure clearly outweighs the public interest in disclosure. The notice shall also include the estimated date for the disclosure of the withheld information.
- b. When delay is continued beyond the initial 60 days because of criminal enforcement proceedings against anyone, at 180-day intervals provide the specific basis that disclosure could reasonably be expected to interfere with a criminal enforcement proceeding and the estimated date for disclosure.
 1. Information withheld shall be disclosed when the specific basis for withholding the information is resolved, the investigation or proceeding is no longer active, or no later than 18 months after the date of the incident, whichever occurs sooner, unless:
 - a. When the criminal proceeding is against someone other than an investigator and there are extraordinary circumstances to warrant a continued delay due to the ongoing criminal investigation or proceeding, then the Bureau must show by clear and convincing evidence that the interest in preventing prejudice to the active and ongoing criminal investigation or proceeding outweighs the public interest for prompt disclosure of records about misconduct or use of force by investigators.

In cases where an action to compel disclosure is brought pursuant to Government Code § 7923.000, the Bureau may justify delay by filing an application to seal the basis for withholding if disclosure of the written basis itself would impact a privilege or compromise a pending investigation (Penal Code § 832.7(b)(8)).

Fitness for Duty

1009.1 PURPOSE AND SCOPE

The purpose of this policy is to ensure that all investigators of this Bureau remain fit for duty and able to perform their job functions (Government Code § 1031).

1009.2 EMPLOYEE RESPONSIBILITIES

- a. All investigators are required to be free from any physical, emotional, or mental condition which might adversely affect the exercise of peace officer powers.
- b. It shall be the responsibility of each member of this Bureau to safely and properly perform the essential duties of his/her position.
- c. Each member of this Bureau shall perform his/her respective duties without physical, emotional, and /or mental constraints which might adversely affect the ability of each member of this Bureau to safely and properly perform the essential duties of his/her position.
- d. Any employee who feels unable to perform his/her duties shall promptly notify a supervisor. In the event that an employee believes that another employee is unable to perform his/her duties, such observations and/or belief shall be promptly reported to a supervisor.

1009.3 SUPERVISOR RESPONSIBILITIES

- a. A supervisor observing an employee, or receiving a report of an employee who is perceived to be, unable to safely perform his/her duties due to a physical or mental condition shall take prompt and appropriate action in an effort to resolve the situation.
- b. A supervisor may ask an employee if he/she is able to safely and properly perform the essential duties of their position. A supervisor shall not ask for details about a health issue such as medical history, diagnosis or treatment.
- c. In the event the employee appears to be in need of immediate medical or psychiatric treatment, all reasonable efforts should be made to provide such care.
- d. The employee's supervisor or Division commander should consult with Human Resources to determine if the employee should be temporarily relieved from his/her duties and/or placed on paid administrative leave.
- e. An employee being temporarily relieved from duty and/or placed on administrative leave shall be approved by the Bureau Chief or designee.

1009.4 NON-WORK RELATED CONDITIONS

Any employee suffering from a non-work related condition which warrants a temporary relief from duty may be required to use annual leave or other "paid time off" (PTO) in order to obtain medical treatment or other reasonable rest period.

1009.5 WORK RELATED CONDITIONS

Fitness for Duty

Any employee suffering from a work related condition which warrants a temporary relief from duty shall be required to comply with personnel rules and guidelines for processing such claims.

Upon the recommendation of the unit supervisor and concurrence of a commander and concurrence with the Bureau Chief or designee, any employee whose actions or use of force in an official capacity result in death or serious injury to another may be temporarily removed from regularly assigned duties and/or placed on paid administrative leave for the well-being of the employee and until such time as the following may be completed:

- a. For the well-being of the employee, the leave may include sufficient time (minimum of 3 days) to ensure he or she has had the opportunity to receive any necessary counseling.

1009.6 PHYSICAL AND PSYCHOLOGICAL EXAMINATIONS

- a. Whenever circumstances reasonably indicate that an employee is unfit for duty, the Bureau Chief may serve that employee with a written order to undergo a physical and/or psychological examination in cooperation with Human Resources to determine the level of the employee's fitness for duty. The order shall indicate the date, time and place for the examination. The examination shall be at the county's expense. The investigator shall be allowed to seek representation before complying with the order.
- b. If the employee places his/her condition at issue in any subsequent or related administrative action /grievance, the examining physician or therapist may be required to disclose any and all information which is relevant to such proceeding (Civil Code § 56.10(c)(8)(A)). The examining physician or therapist will provide Human Resources with a report indicating that the employee is either fit for duty or, if not, listing any functional limitations which limit the employee's ability to perform job duties (Civil Code § 56.10 (c)(8)(B)).
- c. In order to facilitate the examination of any employee, Human Resources will provide all appropriate documents and available information to assist in the evaluation and/or treatment.
- d. All reports and evaluations submitted by the treating physician or therapist shall be part of the confidential section of an employee's personnel records.
- e. Any employee ordered to receive a fitness for duty examination shall comply with the terms of the order and cooperate fully with the examining physician or therapist regarding any clinical interview, tests administered or other procedures as directed. Any failure to comply with such an order and any failure to cooperate with the examining physician or therapist may be deemed insubordination and shall be subject to discipline up to and including termination.
- f. Once an employee has been deemed fit for duty by the examining physician or therapist, the employee will be notified to resume his/her duties.

1009.7 APPEALS

An employee who is separated from paid employment or receives a reduction in salary resulting from a fitness for duty examination shall be entitled to an administrative appeal as outlined in the Personnel Complaints Policy § 1005.

Payroll Records

1010.1 PURPOSE AND SCOPE

This policy provides the guidelines for completing and submitting payroll records of Bureau members who are eligible for the payment of wages.

1010.1.1 RESPONSIBILITY FOR COMPLETION OF PAYROLL RECORDS

Employees are responsible for the accurate and timely submission of payroll records for the payment of wages.

Employees shall certify, via OTime, their timecard accurately reflects their hours prior to submitting to their immediate supervisor.

1010.1.2 TIME REQUIREMENTS

All employees are paid on a bi-weekly basis, usually on Friday, with certain exceptions such as holidays. In the event a holiday falls on a scheduled payday, typically employees will be paid the day before the holiday. Time cards shall be completed and submitted to Administration no later than Thursday morning, the week before the payday, unless specified otherwise.

If an employee is scheduled to work overtime on the day timecards are due, they can submit the timecard the following morning to ensure their timecard accurately reflects the amount of overtime worked. They should be submitted no later than 9:00 am.

Based on the early entry of time cards, occasionally time sheets may inaccurately reflect a last minute change of schedule. Members should submit a written request for correction to their supervisor, or make verbal notification if submitting a written request is not feasible, no later than the next business day.

1010.2 FLEX DAY MODIFICATION

Employees shall not modify their scheduled flex day in order to receive monetary benefit or accrual of compensation time without the prior approval of the division commander, via the chain of command.

1010.3 RECORDS

The Administration Division shall ensure that accurate and timely payroll records are maintained as required by 29 CFR 516.2 for a minimum of three years (29 CFR 516.5).

Overtime Compensation Requests

1011.1 PURPOSE AND SCOPE

It is the policy of the Bureau to compensate non-exempt employees who work authorized overtime either by payment of wages as agreed and in effect through the Memorandum of Understanding (MOU), or by the allowance of accrual of compensatory time off.

1011.1.1 BUREAU POLICY

Because of the nature of police work, and the specific needs of the Bureau, a degree of flexibility concerning overtime policies must be maintained.

In order for non-exempt employees to qualify as unpaid volunteers, the member cannot be employed by the District Attorney to perform the same type of services as those for which the individual proposes to volunteer. All requests to work overtime shall be approved in advance by a supervisor. If circumstances do not permit prior approval, then approval shall be sought as soon as practical during the overtime shift and in no case later than the end of shift in which the overtime is worked.

Short periods of work at the end of the normal duty day (e.g., less than one hour in duration) may be handled unofficially between the supervisor and the employee by flexing a subsequent shift schedule to compensate for the time worked rather than by submitting requests for overtime payments. If the supervisor authorizes or directs the employee to complete a form for such a period, the employee shall comply.

Overtime will result in either compensatory time off or paid time as determined by the applicable MOU.

1011.2 EMPLOYEE RESPONSIBILITY

Employees should make every attempt to contact their immediate supervisor and obtain approval prior to working overtime. Should an employee not be able to contact their immediate supervisor, they shall notify them immediately after working the overtime via email, indicating the amount of time worked and reason for the overtime.

1011.3 SUPERVISOR RESPONSIBILITY

The supervisor shall make an attempt to verify the overtime worked, approve the request and properly document the overtime on the appropriate overtime log. Once complete, the overtime log will be forwarded to the Division commander for final approval.

1011.4 OVERTIME WORK PERIODS

Except as provided in a member's MOU, no employee shall be permitted to work more than sixteen (16) consecutive hours except in an emergency situation.

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1011.5 ACCOUNTING FOR PORTIONS OF AN HOUR

Partial hours of overtime worked are to be accounted for in quarters of an hour. One quarter is equivalent to fifteen minutes as indicated by the following chart:

Time worked	Indicate on Timecard
1-15 minutes	1/4 hour
16-30 minutes	1/2 hour
31-45 minutes	3/4 hour
46-60 minutes	1 hour

Outside Employment

1012.1 PURPOSE AND SCOPE

In order to avoid actual or perceived conflicts of interest for Bureau employees engaging in outside employment, all employees shall obtain written approval from the Bureau Chief or designee prior to engaging in any outside employment. Approval of outside employment shall be at the discretion of the Bureau Chief in accordance with the provisions of this policy.

1012.1.1 DEFINITIONS

Outside Employment - Any member of this Bureau who receives wages, compensation or other consideration of value from another employer, organization or individual not affiliated directly with this Bureau for services, product(s) or benefits rendered.

1012.2 OBTAINING APPROVAL

No member of this Bureau may engage in any outside employment without first obtaining prior written approval of the Bureau Chief or designee. Failure to obtain prior written approval for outside employment or engaging in outside employment prohibited by this policy may lead to disciplinary action.

In order to obtain approval for outside employment, the employee must complete an [Outside Employment Application](#) which shall be submitted to the employee's immediate supervisor. The application will then be forwarded through the chain of command to the Bureau Chief for consideration.

If approved, the employee will be provided with a copy of the approved permit. Unless otherwise indicated in writing on the approved permit, a permit will be valid for a period of one year in which the permit is approved. Any employee seeking to renew a permit shall submit a new [Outside Employment Application](#) in a timely manner. At the beginning of each year, the Professional Standards Division will send a reminder email to Bureau personnel with information on how to apply for or renew an outside work permit. For further information, refer to the [Ethical and Employee Conduct Guidelines](#).

Any employee seeking approval of outside employment, whose request has been denied, shall be provided with a written reason for the denial of the application at the time of the denial (Penal Code § 70(e)(3)).

1012.2.1 APPEAL OF DENIAL OF OUTSIDE EMPLOYMENT

If an employee's Outside Employment Application is denied or the approved permit is withdrawn, suspended or revoked by the Bureau, the employee and his/her representative may meet with and/or file a written notice of appeal to the Bureau Chief within ten days of the date of denial. If the employee's appeal is denied, the employee may file a grievance pursuant to the procedure set forth in the current Memorandum of Understanding (MOU).

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1012.3 REVOCATION/SUSPENSION OF OUTSIDE EMPLOYMENT PERMITS

Any outside employment permit may be revoked or suspended under the following circumstances:

- a. Should an employee's performance at this Bureau decline to a point where it is evaluated by a supervisor as "needs improvement" to reach an overall level of competency, the Bureau Chief may, at his or her discretion, revoke any previously approved outside employment permit(s). That revocation will stand until the employee's performance has been reestablished at a "satisfactory" level by his or her supervisor.
- b. If, at any time during the term of a valid outside employment permit, a member's outside employment substantially interferes with the member's ability to perform their Bureau job duties, the permit may be suspended or revoked.

1012.4 PROHIBITED OUTSIDE EMPLOYMENT

Consistent with the provisions of Government Code § 1126, the Bureau expressly reserves the right to deny any Outside Employment Application submitted by an employee seeking to engage in any activity which:

- a. Involves the employee's use of Bureau time, facilities, equipment or supplies, the use of the Bureau badge, uniform, prestige or influence for private gain or advantage.
- b. Involves the employee's receipt or acceptance of any money or other consideration from anyone other than this Bureau for the performance of an act which the employee, if not performing such act, would be required or expected to render in the regular course or hours of employment or as a part of the employee's duties as a member of this Bureau.
- c. Involves the performance of an act, in other than the employee's capacity as a member of this Bureau, that may later be subject directly or indirectly to the control, inspection, review, audit or enforcement of any other employee of this Bureau.
- d. Involves time demands that would render performance of the employee's duties for this Bureau less efficient.

1012.4.1 OUTSIDE SECURITY AND PEACE OFFICER EMPLOYMENT

No member of this Bureau may engage in any outside or secondary employment as a private security guard, private investigator or other similar private security position.

1012.5 BUREAU RESOURCES

Employees are prohibited from using any Bureau equipment or resources in the course of, or for the benefit of, any outside employment. This shall include the prohibition of access to official records or databases of this Bureau or other agencies through the use of the employee's position with this Bureau.

1012.5.1 REVIEW OF FINANCIAL RECORDS

Employees approved for outside employment expressly agree that their personal financial records may be requested and reviewed/audited for potential conflict of interest (Government Code § 3308; Government

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Code § 1126). Prior to providing written approval for an outside employment position, the Bureau may request that an employee provide his/her personal financial records for review/audit in order to determine whether a conflict of interest exists. Failure of the employee to provide the requested personal financial records could result in denial of the off-duty work permit. If, after approving a request for an outside employment position, the Bureau becomes concerned that a conflict of interest exists based on a financial reason, the Bureau may request that the employee provide his/her personal financial records for review/audit. If the employee elects not to provide the requested records, his/her off-duty work permit may be revoked pursuant to the Revocation/Suspension of Outside Employment Permits section of this policy.

1012.6 CHANGES IN OUTSIDE EMPLOYMENT STATUS

If an employee terminates his or her outside employment during the period of a valid permit, the employee shall promptly submit written notification of such termination to the Bureau Chief via the chain of command. Any subsequent request for renewal or continued outside employment must thereafter be processed and approved through normal procedures set forth in this policy.

Employees shall also promptly submit in writing, to the Bureau Chief, any material changes in outside employment including any change in the number of hours, type of duties, or demands of any approved outside employment. Employees who are uncertain whether a change in outside employment is material are advised to report the change.

1012.7 OUTSIDE EMPLOYMENT WHILE ON DISABILITY OR MODIFIED/LIGHT-DUTY

Bureau employees engaged in outside employment, who are placed on disability leave or modified/light-duty, shall inform their immediate supervisor in writing within five days, whether or not they intend to continue to engage in such outside employment while on such leave or light-duty status. If the employee is unable to make proper notification in writing, the immediate supervisor shall submit the written notification on their behalf. The immediate supervisor shall review the duties of the outside employment along with any related doctor's restrictions, and make a recommendation to the Bureau Chief whether such outside employment should continue.

In the event the Bureau Chief determines that the outside employment should be discontinued, a notice of suspension of the employee's permit will be forwarded to the involved employee, and a copy attached to the original work permit.

Criteria for suspending the outside employment permit include, but are not limited to, the following:

- a. The outside employment is medically detrimental to the total recovery of the disabled member, as indicated by the County's professional medical advisors.
- b. The outside employment performed requires the same or similar physical ability, as would be required of an on-duty member.
- c. The employee's failure to make timely notice of their intentions to their supervisor.

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When the employee returns to full duty with the Orange County District Attorney Bureau of Investigation, a request (in writing), by the employee, may be made to the Bureau Chief to restore the permit.

Personal Appearance Standards

1013.1 PURPOSE AND SCOPE

In order to project uniformity and neutrality toward the public and other members of the bureau, employees shall maintain their personal hygiene and appearance to project a professional image appropriate for this bureau and for their assignment.

Dress Standards shall be professional at all times to promote a positive image to the community. The general public forms its initial impression of the professional credibility of the office based partially on appearance.

1013.2 GROOMING STANDARDS

1013.2.1 MALE EMPLOYEES

1. Clothing

1. Clothing shall be clean, properly maintained and tailored to present a neat businesslike appearance.
 - a. A suit or a coat, slacks, dress shirt and a necktie will be worn. Coats may be removed while inside buildings, while driving a vehicle or under unusual circumstances
 - b. Blue jeans or denim are not appropriate under normal circumstances.
 - c. Shoes or boots shall be neat, clean and properly maintained.

2. Hair

- a. Hair shall be styled to present a neat, clean, trimmed, well-groomed appearance, and will conform to the following standards:
 - a. May not cover more than the top one-half of the ear.
 - b. May not cover any portion of the collar.
 - c. Hair color, and any highlights, must remain within the natural range of human hair color such as black, blonde, brown, red, and gray.

3. Sideburns

- a. Shall be neatly trimmed at all times.
- b. May not extend below the bottom of the ear.
- c. May not be flared beyond one and one-half inches in width and will end with a clean-shaven horizontal line.
- d. Sideburns may not connect with the mustache.

4. Mustaches

- a. Shall be neatly trimmed at all times.
- b. Hair in front may not extend below the upper limit of the top lip.
- c. Hair may extend one-quarter inch beyond the corner of the mouth and follow the natural curve of the upper limit of the top lip.

Personal Appearance Standards

- d. The natural growth direction of the hair may not be altered by physical means (i.e., waxing to alter direction of growth).

5. Beards

- 1. The face will be clean-shaven other than the wearing of an acceptable mustache or sideburns, except when shaving is not prudent due to valid medical reasons.

6. Jewelry

- 1. Jewelry worn in reasonable moderation and good taste is acceptable. No jewelry may be worn in a manner that might constitute a safety hazard.

1013.2.2 FEMALE EMPLOYEES

1. Clothing

- a. Clothing shall be clean, properly maintained and present a neat businesslike appearance. Pantsuits with jackets, skirts with blouses and/or jackets, tailored slacks with appropriate tops, or dresses may be worn. Hem length must be no shorter than 3 inches above the knee, modest and professional.
- b. Blue jeans or denims are not appropriate under normal circumstances.
- c. Closed front and back shoes or boots, shall be neat, clean and properly maintained. Heels are not to exceed 3.5 inches.
- d. Appropriate undergarments must be worn.
- e. All shorts, leather, or leather type material pants are not permitted.
- f. Blouses and shirts must not expose cleavage or the midriff area. Tank tops, tube tops and "Spaghetti" strapped tops are not acceptable to wear, unless covered by a jacket or appropriate outer garment.
- g. Hair
 - 1. Hair shall be styled to present a neat, clean, trimmed and well-groomed appearance and will conform to the following standards:
 - a. Hair may not restrict the field of vision.
 - b. Hair color, and any highlights, must remain within the natural range of human hair color such as black, blonde, brown, red, and gray.

2. Jewelry

- a. Jewelry worn in reasonable moderation and good taste is acceptable. No jewelry may be worn in a manner that might constitute a safety hazard.

1013.3 CONCEALMENT IN CIVILIAN ATTIRE

Nearly all assignments within the Bureau require investigators to dress in professional civilian attire. When an investigator is on-duty and conducting Bureau-related business in civilian attire, outside of the office, the following shall be covered by a jacket, coat or similar cover:

- a. Weapon
- b. Dome badge
- c. Any Bureau-related patches or insignia
- d. Police radio

Personal Appearance Standards

If conducting on-duty Bureau-related business while in uniform, the above does not apply. It is imperative that although the Bureau is not a first responder organization, if an investigator is in public while wearing a uniform, identifying themselves as a police officer, they should be ready to act accordingly as a first responder.

While off-duty, driving to and from work in a personal vehicle, investigators shall cover any/all insignia identifying themselves as a police officer.

1013.4 CASUAL BUSINESS ATTIRE

Exceptions to the Personal Appearance Standards are allowed only with prior approval of the investigator's direct supervisor. Unit supervisors may authorize business casual attire for special projects or assignments for a specified period of time. Casual business attire may also be authorized under certain circumstances when the employee will be in the office the entire day and has no public contact, appointments or meetings with anyone except other employees of the District Attorney's Office. Meetings with the District Attorney will be in formal business attire except with prior approval of the Bureau Chief.

Requirements for business casual attire:

- a. Shirts with collars (Bureau-issued polo with OCDA logo or similar style polo)
- b. Casual shoes (work boots, boat shoes, deck shoes, athletic shoes, flip flops, and cowboy boots are not acceptable)
- c. Casual slacks, pants or skirts (jeans, western wear, faded, stone washed, or torn clothing are not acceptable)
- d. All business casual attire should be clean, unwrinkled, not frayed and in good condition
- e. Company logos and advertising on clothing are not acceptable.

Due to daily changing conditions and work schedules, investigators are expected to have formal dress attire available at all times. Civilian Bureau Staff are expected to have business appropriate attire available at all times in the event they are asked to respond to court or to another law enforcement agency.

1013.4.1 SUMMER ATTIRE

Exceptions to the Personal Appearance Standards are allowed during the summer months, with prior approval from the Bureau Chief, under the following conditions:

- a. No public contact, field work, appointments or meetings with anyone except other District Attorney employees
- b. No court appearance

The attire deemed appropriate during the summer months is CASUAL BUSINESS ATTIRE (refer to § 1013.4).

1013.5 BODY PIERCING OR ALTERATION

Personal Appearance Standards

Body piercing or alteration to any area of the body visible in any authorized attire that is deviation from normal anatomical features and which is not medically required is prohibited. Such body alteration includes, but is not limited to:

- a. Tongue splitting or piercing
- b. Nose piercing
- c. The complete or transdermal implantation of any material other than hair replacement
- d. Abnormal shaping of the ears, eyes, nose or teeth
- e. Branding or scarification

1013.6 TATTOOS

Visible tattoos or other body art are not permitted while representing the Orange County District Attorney's Office in official capacity. Exceptions with supervisor approval are the following:

- a. Undercover assignments
- b. Training events

1013.7 INTERPRETATIONS

Exceptions to these standards are allowed only with prior approval of the investigator's direct supervisor. Any interpretation or application problems regarding these standards shall be brought to the attention of the Bureau Chief or the Assistant Chief.

1013.8 EXEMPTIONS

Members who seek exemption to this policy based upon religious belief, observance, and practice, including religious dress and grooming practices, should generally be accommodated (Government Code § 12926). A member with an exemption may be ineligible for an assignment if the individual accommodation presents a security or safety risk. The Bureau Chief should be advised any time a request for such an accommodation is denied or when a member with a religious or other exemption is denied an assignment based on a safety or security risk.

Temporary Modified-Duty Assignments

1014.1 PURPOSE AND SCOPE

This policy establishes procedures for providing temporary modified-duty assignments. This policy is not intended to affect the rights or benefits of employees under federal or state law, County rules, current memorandums of understanding or collective bargaining agreements. For example, nothing in this policy affects the obligation of the Bureau to engage in a good faith, interactive process to consider reasonable accommodations for any employee with a temporary or permanent disability that is protected under federal or state law.

1014.2 POLICY

Subject to operational considerations, the Orange County District Attorney Bureau of Investigation may identify temporary modified-duty assignments for employees who have an injury or medical condition resulting in temporary work limitations or restrictions. A temporary assignment allows the employee to work, while providing the Bureau with a productive employee during the temporary period.

1014.3 GENERAL CONSIDERATIONS

Priority consideration for temporary modified-duty assignments will be given to employees with work-related injuries or illnesses that are temporary in nature. Employees having disabilities covered under the Americans with Disabilities Act (ADA) or the California Fair Employment and Housing Act (Government Code § 12940 et seq.) shall be treated equally, without regard to any preference for a work-related injury.

No position in the Orange County District Attorney Bureau of Investigation shall be created or maintained as a temporary modified-duty assignment.

Temporary modified-duty assignments are a management prerogative and not an employee right. The availability of temporary modified-duty assignments will be determined on a case-by-case basis, consistent with the operational needs of the Bureau. Temporary modified-duty assignments are subject to continuous reassessment, with consideration given to operational needs and the employee's ability to perform in a modified-duty assignment.

The Bureau Chief or the authorized designee may restrict employees working in temporary modified-duty assignments from wearing a uniform, displaying a badge, carrying a firearm, operating an emergency vehicle, engaging in outside employment, or being otherwise limited in employing their peace officer powers.

Temporary modified-duty assignments shall generally not exceed a cumulative total of 1,040 hours in any one-year period.

1014.4 PROCEDURE

Temporary Modified-Duty Assignments

Discussion of temporary modified duty assignment is triggered by a notice of work restrictions received by Human Resources from Employee Health Services (for non-work related injuries or pending worker's comp claims) or York (for approved worker's comp claims). Upon receipt of work restrictions, Human Resources will review and determine if an interactive meeting is required. If one is required, Human Resource's Return-to-Work Coordinator will contact the employee and the employee's direct supervisor to schedule an interactive meeting. This meeting may be conducted in-person or telephonically if an in-person meeting is not feasible. The interactive meeting will consist of a discussion of the nature and scope of limitations and/or work restrictions in relation to the employee's job duties. During this meeting, the employee may request an accomodation and/or modification to their current assignment.

Following the interactive meeting, Human Resources, in conjunction with the direct supervisor, will determine whether the Bureau is able to accomodate the employee temporarily in their current assignment or in a modified duty assignment. The Human Resource's Return-to-Work Coordinator will provide a summary of the interactive meeting and any accommodations that are approved. If a temporary modified duty assignment is offered, the employee shall receive written notice of the nature and duration of the temporary modified duty assignment.

1014.5 ACCOUNTABILITY

Written notification of assignments, work schedules and any restrictions should be provided to employees assigned to temporary modified-duty assignments and their supervisors. Those assignments and schedules may be adjusted to accommodate Bureau operations and the employee's medical appointments, as mutually agreed upon with the Division commander.

1014.5.1 EMPLOYEE RESPONSIBILITIES

The responsibilities of employees assigned to temporary modified duty shall include, but not be limited to:

- a. Communicating and coordinating any required medical and physical therapy appointments in advance with their direct supervisor.
- b. Promptly notifying their direct supervisor, Employee Health and York of any change in restrictions or limitations after each appointment with their treating medical professionals.

1014.5.2 SUPERVISOR RESPONSIBILITIES

The employee's immediate supervisor shall monitor and manage the work schedule of those assigned to temporary modified duty.

The responsibilities of supervisors shall include, but not be limited to:

- a. Periodically apprising the Division commander of the status and performance of employees assigned to temporary modified duty.
- b. Notifying the Division commander and ensuring that the required documentation facilitating a return to full duty is received from the employee.

Temporary Modified-Duty Assignments

- c. Ensuring that employees returning to full duty have completed any required training and certification.

1014.6 MEDICAL EXAMINATIONS

Prior to returning to full-duty status, employees shall be required to provide certification from their treating medical professionals stating that they are medically cleared to perform the essential functions of their jobs without restrictions or limitations and cleared through the county doctor.

The Bureau may require a fitness-for-duty examination prior to returning an employee to full-duty status, in accordance with the Fitness for Duty Policy § 1009. A fitness-for-duty exam should only be recommended when there is legitimate concern and evidence that the employee is unable to perform the essential functions of their position due to a serious medical, emotional or mental condition.

1014.7 PREGNANCY

If an employee is temporarily unable to perform regular duties due to a pregnancy, childbirth or a related medical condition, the employee will be treated the same as any other temporarily disabled employee (42 USC § 2000e(k)). A pregnant employee shall not be involuntarily transferred to a temporary modified-duty assignment.

1014.7.1 NOTIFICATION

Pregnant employees should notify their immediate supervisors as soon as practicable and provide a statement from their medical providers identifying any pregnancy-related job restrictions or limitations. If at any point during the pregnancy it becomes necessary for the employee to take a leave of absence, such leave shall be granted in accordance with the County's personnel rules and regulations regarding family and medical care leave.

1014.8 MAINTENANCE OF CERTIFICATION AND TRAINING

Employees assigned to temporary modified duty shall maintain all certification, training and qualifications appropriate to both their regular and temporary duties, provided that the certification, training or qualifications are not in conflict with any medical limitations or restrictions. Employees who are assigned to temporary modified duty shall inform their supervisors of any inability to maintain any certification, training or qualifications.

Employee Speech, Expression and Social Networking

1015.1 PURPOSE AND SCOPE

This policy is intended to address issues associated with employee use of social networking sites and to provide guidelines for the regulation and balancing of employee speech and expression with the needs of the Bureau.

Nothing in this policy is intended to prohibit or infringe upon any communication, speech or expression that is protected or privileged under law. This includes speech and expression protected under state or federal constitutions as well as labor or other applicable laws. For example, this policy does not limit an employee from speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit or investigator associations, about matters of public concern, such as misconduct or corruption.

Employees are encouraged to consult with their supervisor regarding any questions arising from the application or potential application of this policy.

1015.1.1 APPLICABILITY

This policy applies to all forms of communication including, but not limited to, film, video, print media, public or private speech, use of all Internet services, including the World Wide Web, e-mail, file transfer, remote computer access, news services, social networking, social media, instant messaging, blogs, forums, video and other file-sharing sites.

1015.2 POLICY

Public employees occupy a trusted position in the community, and thus, their statements have the potential to contravene the policies and performance of this Bureau. Due to the nature of the work and influence associated with the law enforcement profession, it is necessary that employees of this Bureau be subject to certain reasonable limitations on their speech and expression. To achieve its mission and efficiently provide service to the public, the Orange County District Attorney Bureau of Investigation will carefully balance the individual employee's rights against the Bureau's needs and interests when exercising a reasonable degree of control over its employees' speech and expression.

1015.3 SAFETY

Employees should consider carefully the implications of their speech or any other form of expression when using the Internet. Speech and expression that may negatively affect the safety of Orange County District Attorney employees, such as posting personal information in a public forum, can result in compromising an employee's home address or family ties. Employees should therefore not disseminate or post any information on any forum or medium that could reasonably be anticipated to compromise the safety of any employee, an employee's family or associates. Examples of the type of information that could reasonably be expected to compromise safety include:

Employee Speech, Expression and Social Networking

- Disclosing a photograph and name or address of an investigator who is working undercover.
- Disclosing the address of a fellow investigator.
- Otherwise disclosing where another investigator can be located off-duty.

1015.4 PROHIBITED SPEECH, EXPRESSION AND CONDUCT

To meet the Bureau's safety, performance and public-trust needs, the following are prohibited unless the speech is otherwise protected (for example, an employee speaking as a private citizen, including acting as an authorized member of a recognized bargaining unit or investigator associations, on a matter of public concern):

- a. Speech or expression made pursuant to an official duty that tends to compromise or damage the mission, function, reputation or professionalism of the Office of the Orange County District Attorney or its employees.
- b. Speech or expression that, while not made pursuant to an official duty, is significantly linked to, or related to, the Office of the Orange County District Attorney and tends to compromise or damage the mission, function, reputation or professionalism of the Office of the Orange County District Attorney or its employees. Examples may include:
 1. Statements that indicate disregard for the law or the state or U.S. Constitution.
 2. Expression that demonstrates support for criminal activity.
 3. Participating in sexually explicit photographs or videos for compensation or distribution.
- c. Speech or expression that could reasonably be foreseen as having a negative impact on the credibility of the employee as a witness. For example, posting statements or expressions to a website that glorify or endorse dishonesty, unlawful discrimination or illegal behavior.
- d. Speech or expression of any form that could reasonably be foreseen as having a negative impact on the safety of the employees of the Bureau. For example, a statement on a blog that provides specific details as to how and when prisoner transportations are made could reasonably be foreseen as potentially jeopardizing employees by informing criminals of details that could facilitate an escape or attempted escape.
- e. Speech or expression that is contrary to the canons of the Law Enforcement Code of Ethics as adopted by the Orange County District Attorney Bureau of Investigation.
- f. Use or disclosure, through whatever means, of any information, photograph, video or other recording obtained or accessible as a result of employment with the Bureau for financial or personal gain, or any disclosure of such materials without the express authorization of the Bureau Chief or the authorized designee.
- g. Posting, transmitting or disseminating any photographs, video or audio recordings, likenesses or images of Bureau logos, emblems, uniforms, badges, patches, marked vehicles, equipment or other material that specifically identifies the Office of the Orange County District Attorney on any personal or social networking or other website or web page, without the express authorization of the Bureau Chief.

Employee Speech, Expression and Social Networking

- h. Accessing websites for non-authorized purposes, or use of any personal communication device, game device or media device, whether personally or Bureau-owned, for personal purposes while on-duty, except in the following circumstances:
 - 1. When brief personal communication may be warranted by the circumstances (e.g., inform family of extended hours).
 - 2. During authorized breaks such usage should be limited as much as practicable to areas out of sight and sound of the public and shall not be disruptive to the work environment.

Employees must take reasonable and prompt action to remove any content, including content posted by others, that is in violation of this policy from any web page or website maintained by the employee (e.g., social or personal website).

1015.4.1 UNAUTHORIZED ENDORSEMENTS AND ADVERTISEMENTS

While employees are not restricted from engaging in the following activities as private citizens or as authorized members of a recognized bargaining unit or investigator association, employees may not represent the Office of the Orange County District Attorney or engage in these activities while wearing their uniform or identify themselves in any way that could be reasonably perceived as representing the Orange County District Attorney Bureau of Investigation in order to do any of the following, unless specifically authorized by the Bureau Chief:

- a. Participate in political activities of any kind (Government Code § 3206; Government Code § 3302).
- b. Endorse, support, oppose or contradict any social issue, cause or religion.
- c. Endorse, support or oppose any product, service, company or other commercial entity.
- d. Appear in any commercial, social or nonprofit publication or any motion picture, film, video, public broadcast or on any website.

Additionally, when it can reasonably be construed that an employee, acting in his/her individual capacity or through an outside group or organization (e.g., bargaining group or investigator associations), is affiliated with this Bureau, the employee shall give a specific disclaiming statement that any such speech or expression is not representative of the Orange County District Attorney Bureau of Investigation.

Employees retain their right to vote as they choose, to support candidates of their choice and to express their opinions as private citizens, including as authorized members of a recognized bargaining unit or investigator association, on political subjects and candidates at all times while off-duty.

However, employees may not use their official authority or influence to interfere with or affect the result of an election or a nomination for office. Employees are also prohibited from directly or indirectly using their official authority to coerce, command or advise another employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes (5 USC § 1502).

1015.5 PRIVACY EXPECTATION

For information regarding privacy expectations, refer to § 315.3 PRIVACY EXPECTATION of this policy manual.

OCDA Bureau of Investigation Policy Manual

Law Enforcement Policy

Employee Speech, Expression and Social Networking

Anti-Retaliation

1016.1 PURPOSE AND SCOPE

This policy prohibits retaliation against members who identify workplace issues, such as fraud, waste, abuse of authority, gross mismanagement or any inappropriate conduct or practices, including violations that may pose a threat to the health, safety or well-being of members.

This policy does not prohibit actions taken for nondiscriminatory or non-retaliatory reasons, such as discipline for cause.

These guidelines are intended to supplement and not limit members' access to other applicable remedies. Nothing in this policy shall diminish the rights or remedies of a member pursuant to any applicable federal law, provision of the U.S. Constitution, law, ordinance or memorandum of understanding.

1016.2 POLICY

The Orange County District Attorney Bureau of Investigation has a zero tolerance for retaliation and is committed to taking reasonable steps to protect from retaliation members who, in good faith, engage in permitted behavior or who report or participate in the reporting or investigation of workplace issues. All complaints of retaliation will be taken seriously and will be promptly and appropriately investigated.

1016.3 RETALIATION PROHIBITED

No member may retaliate against any person for engaging in lawful or otherwise permitted behavior; for opposing a practice believed to be unlawful, unethical, discriminatory or retaliatory; for reporting or making a complaint under this policy; or for participating in any investigation related to a complaint under this or any other policy.

Retaliation includes any adverse action or conduct, including but not limited to:

- Refusing to hire or denying a promotion
- Extending the probationary period
- Unjustified reassignment of duties or change of work schedule
- Real or implied threats or other forms of intimidation to dissuade the reporting of wrongdoing or filing of a complaint, or as a consequence of having reported or participated in protected activity
- Taking unwarranted disciplinary action
- Spreading rumors about the person filing the complaint or about the alleged wrongdoing
- Avoiding a person to the extent that it substantially interferes with that person's ability to effectively perform his/her job duties

1016.3.1 RETALIATION PROHIBITED FOR REPORTING VIOLATIONS

Anti-Retaliation

An investigator shall not be retaliated against for reporting a suspected violation of a law or regulation of another investigator to a supervisor or other person in the Bureau who has the authority to investigate the violation (Government Code § 7286(b)).

1016.4 COMPLAINTS OF RETALIATION

Any member who feels he/she has been retaliated against in violation of this policy should promptly report the matter to any supervisor, command staff member, Bureau Chief or Human Resources .

Members shall act in good faith, not engage in unwarranted reporting of trivial or minor deviations or transgressions, and make reasonable efforts to verify facts before making any complaint in order to avoid baseless allegations. Members shall not report or state an intention to report information or an allegation knowing it to be false, with willful or reckless disregard for the truth or falsity of the information or otherwise act in bad faith.

Investigations are generally more effective when the identity of the reporting member is known, thereby allowing investigators to obtain additional information from the reporting member. However, complaints may be made anonymously. All reasonable efforts shall be made to protect the reporting member's identity. However, confidential information may be disclosed to the extent required by law or to the degree necessary to conduct an adequate investigation and make a determination regarding a complaint. In some situations, the investigative process may not be complete unless the source of the information and a statement by the member is part of the investigative process.

1016.5 SUPERVISOR RESPONSIBILITIES

Supervisors are expected to remain familiar with this policy and ensure that members under their command are aware of its provisions.

The responsibilities of supervisors include, but are not limited to:

- a. Ensuring complaints of retaliation are investigated as provided in the Personnel Complaints Policy.
- b. Receiving all complaints in a fair and impartial manner.
- c. Documenting the complaint and any steps taken to resolve the problem.
- d. Acknowledging receipt of the complaint, notifying the Bureau Chief via the chain of command and explaining to the member how the complaint will be handled.
- e. Taking appropriate and reasonable steps to mitigate any further violations of this policy.
- f. Monitoring the work environment to ensure that any member making a complaint is not subjected to further retaliation.
- g. Periodic follow-up with the complainant to ensure that retaliation is not continuing.
- h. Not interfering with or denying the right of a member to make any complaint.
- i. Taking reasonable steps to accommodate requests for assignment or schedule changes made by a member who may be the target of retaliation if it would likely mitigate the potential for further violations of this policy.

Anti-Retaliation

1016.6 COMMAND STAFF RESPONSIBILITIES

The Bureau Chief should communicate to all supervisors the prohibition against retaliation.

Command staff shall treat all complaints as serious matters and shall ensure that prompt actions take place, including but not limited to:

- a. Communicating to all members the prohibition against retaliation.
- b. The timely review of complaint investigations.
- c. Remediation of any inappropriate conduct or condition and instituting measures to eliminate or minimize the likelihood of recurrence.
- d. The timely communication of the outcome to the complainant.

1016.7 WHISTLE-BLOWING

California law protects members who (Labor Code § 1102.5; Government Code § 53296 et seq.):

- a. Report a violation of a state or federal statute or regulation to a government or law enforcement agency, including the member's supervisor or any other member with the authority to investigate the reported violation.
- b. Provide information or testify before a public body if the member has reasonable cause to believe a violation of law occurred.
- c. Refuse to participate in an activity that would result in a violation of a state or federal statute or regulation.
- d. File a complaint with a local agency (refer to Government Code § 53296 for definition of local agency) about gross mismanagement or a significant waste of funds, abuse of authority or a substantial and specific danger to public health or safety.
- e. Are family members who have engaged in any protected acts described above.

Members are encouraged to report any legal violations through the chain of command (Labor Code § 1102.5).

Members who believe they have been the subject of retaliation for engaging in such protected behaviors should promptly report it to a supervisor. Supervisors should refer the complaint to the Professional Standards Division for investigation pursuant to the Personnel Complaints Policy § 1005.

1016.7.1 DISPLAY OF WHISTLE-BLOWER LAWS

The Bureau shall display a notice to members regarding their rights and responsibilities under the whistle-blower laws, including the whistle-blower hotline maintained by the Office of the Attorney General (Labor Code § 1102.8).

1016.8 RECORDS RETENTION AND RELEASE

Anti-Retaliation

The Professional Standards Division shall ensure that documentation of investigations is maintained in accordance with the established records retention schedules.

1016.9 TRAINING

The policy should be reviewed with each new member.

All members should receive periodic refresher training on the requirements of this policy.

Occupational Disease and Work-Related Injury Reporting

1017.1 PURPOSE AND SCOPE

The purpose of this policy is to provide for the reporting of on-duty injuries or deaths to Human Resources, ensure proper medical attention is received and document the circumstances of the incident.

1017.1.1 DEFINITIONS

Definitions related to this policy include:

Occupational disease or work-related injury - An injury, disease or psychiatric injury arising out of employment (Labor Code § 3208; Labor Code § 3208.3; Labor Code § 3212 et seq.).

Accident - Any occurrence from which bodily injury or property damage may result, regardless of whether any injury or damage actually does occur (e.g., exposure where no immediate injury is apparent).

1017.2 POLICY

The Orange County District Attorney Bureau of Investigation will address occupational diseases and work-related injuries appropriately, and will comply with applicable state workers' compensation requirements (Labor Code § 3200 et seq.).

1017.3 RESPONSIBILITIES

1017.3.1 MEMBER RESPONSIBILITIES

Any member sustaining any occupational disease or work-related injury and who desires workers' compensation benefits (or may desire workers' compensation benefits at a later time), shall report such event as soon as practicable, to a supervisor and/or Human Resources, and should seek medical care when appropriate.

An Occupational Injury and Illness Reporting Packet should be obtained from a supervisor.

1017.3.2 SUPERVISOR RESPONSIBILITIES

A supervisor learning of any occupational disease or work-related injury should ensure the member receives medical care as appropriate, shall report such event within 24 hours, and shall complete the [Supervisor's Investigation of Employee Injury or Illness](#) form as outlined in the Safety and Loss Prevention Resource Manual Policy. If the employee reports he/she has been exposed to an infectious disease, prior to sending the employee for treatment, call the medical facility to advise them. They will provide instructions on precautionary steps to take before the employee enters the facility to minimize the risk of exposure to other patients.

Occupational Disease and Work-Related Injury Reporting

For work-related accidents or injuries requiring medical treatment, provide the employee with an Occupational Injury and Illness Reporting Packet. This will provide the employee with a list of Initial Treatment Facilities, directions on how to access all necessary and required documentation such as the Employers Report of Occupational Injury (Form 5020), the [Worker's Compensation Claim Form \(DWC 1\)](#) and the [Supervisor's Investigation of Employee Injury or Illness](#) (both forms located on the [DA Intranet](#)). Lastly, these provisions are subject to limitations and/or provisions of the Alternative Dispute Resolution (ADR) agreement.

All copies of completed forms shall be forwarded to Human Resources via the chain of command. If the employee opts to notify Human Resources directly, it is the employee's responsibility to make proper notification to their immediate supervisor.

Supervisors shall determine whether the Major Incident Notification § 320 and Line of Duty Deaths § 1019 policies apply and take additional action as required.

1017.3.3 DIVISION COMMANDER RESPONSIBILITIES

The commander shall review and forward copies of the report to Human Resources. Copies of the report and related documents retained by the Bureau shall be filed in a separate confidential section of the member's personnel file.

Uniform Regulations

1018.1 PURPOSE AND SCOPE

The uniform policy of the Bureau of Investigation is established to ensure uniformed investigators will be readily identifiable to the public through the proper use of agency issued field enforcement uniforms.

1018.2 WEARING AND CONDITION OF UNIFORM AND EQUIPMENT

Police employees wear a uniform to be identified as the law enforcement authority in society. The uniform also serves an equally important purpose to identify the wearer as a source of assistance in an emergency, crisis or other time of need.

1. Uniform and equipment shall be maintained in a serviceable condition and shall be ready at all times for immediate use. Uniforms shall be kept neat, clean, and appear professional.
2. All investigators of this agency shall possess and maintain at all times, a serviceable issued uniform and the necessary equipment to perform field enforcement duties, if needed.
3. The uniform is to be worn in compliance with the specifications set forth in this policy.
4. All supervisors will perform periodic inspections of their personnel to ensure conformance to these regulations.
5. Civilian attire shall not be worn in combination with any distinguishable part of the uniform (example, jeans) without supervisor approval.
6. Uniforms are only to be worn while on duty, while in transit to or from work, for court, or at other official Bureau functions or events.
7. If the uniform is worn while in transit, an outer garment shall be worn over the uniform shirt so as not to bring attention to the employee while he/she is off-duty.
8. Unless specifically authorized by the Bureau Chief, uniforms shall not be worn during participation in political activities of any kind (Government Code §§ 3206,3302).
9. Employees are not to purchase or drink alcoholic beverages while wearing any part of the Bureau uniform, including the uniform pants.
10. Mirrored sunglasses will not be worn with any Bureau uniform.
11. Visible jewelry, other than those items listed below, shall not be worn with the uniform unless specifically authorized by the Chief or the authorized designee.
 1. Wrist-watch and medical alert bracelet
 2. Wedding ring(s), class ring, or other ring of tasteful design. A maximum of one ring set may be worn on each hand
 3. Stud earrings

1018.3 UNIFORM CLASSES

1018.3.1 CLASS C - BUREAU FIELD ENFORCEMENT UNIFORM

Uniform Regulations

The Bureau field enforcement uniform is authorized by the supervising investigator of a unit. That supervising investigator determines the uniform of the day for their personnel. Refer to the Personal Appearance Standards Policy for further. Violation of uniform regulations may lead to discipline.

The uniform attire consists of the following items:

- a. Black 5.11 or Cornerstone Performance short sleeve polo shirt (one issued to each investigator).
Black 5.11 or Cornerstone long sleeve polo shirt is permitted.
 - 1. Cloth Bureau badge patch left chest
 - 2. Cloth Bureau patches on sleeves
 - 3. POLICE back of polo shirt
 - 4. Monogramming of investigator name right chest
- b. Black 5.11 Stryke "Flex Tac" trousers (one issued to each investigator).
- c. Black t-shirt (employee responsibility).
- d. Black police work boots (employee responsibility).
- e. Black unisex jacket.
 - 1. 5.11 Tactical Response Jacket issued to each investigator
 - a. Cloth Bureau badge patch left jacket flap
 - b. POLICE back flap of jacket
 - c. Embroidered name on right jacket flap
 - 2. Sabre 2.0, (enforcement assignments only)
 - a. Cloth Bureau badge patch left jacket flap
 - b. Cloth Bureau patches with velcro for shoulder patches
 - c. POLICE back flap of jacket
 - d. Embroidered name on right jacket flap

1018.3.2 CLASS A UNIFORM (OPTIONAL)

The Class A uniform is optional and can be requested through the Professional Standards Division. The Class A uniform is to be worn on special occasions such as funerals, graduations, ceremonies, or as directed. The Class A uniform is for sworn personnel only.

Class A uniforms shall be worn with shoulder patches, service stripes, and appropriate insignia of rank or assignment, if applicable. Sleeves shall not be rolled up. All buttons shall be buttoned. Ties and dress hats shall be worn with the Class A uniform.

The Class A uniform shall consist of the following items:

- a. Long sleeve shirt.
 - 1. Dark navy blue in color, wool material, with a collar suitable for the wearing of a tie and have melamine high impact dark navy buttons down the center of the shirt, removable button

Uniform Regulations

- feature, pocket flaps, shoulder straps (epaulets) suitable to accommodate metal silver P buttons. P buttons shall be a silver oxide finish, 5/8-inch diameter and used for the pocket flaps and epaulets (four P buttons total)
- b. Tie (black clip-on).
- c. Tie bar.
 - 1. Polished nickel
 - 2. Shall be placed on the tie even with the bottom of the pocket flap
- d. Bureau dome badge.
 - 1. Shall be placed on the left chest
- e. Cloth Bureau patches on sleeves.
- f. Service hash mark stripes.
 - 1. Silver and black in color
 - 2. Shall be placed on the left sleeve (see 1018.4 for specific placement)
- g. Name plate with surname.
 - 1. Polished nickel with black lettering
 - 2. Centered above right pocket
- h. Polished black shoes or boots made of black leather Corfam or similar type product with a smooth finish, and plain rounded toe (boots with pointed toes are not permitted).
- i. Socks.
 - 1. Black in color
- j. Hat piece.
 - 1. Dark navy blue round top dress hat
 - 2. With a high gloss plain black strap above the brim and two silver P-buttons
 - 3. Cap piece
- k. Polished Sam Browne belt (plain black leather) with nickel-plated, colonial style buckle equipped with the following:
 - 1. Belt keepers (four plain black leather with two polished nickel snaps or four plain black leather without visible snaps)
 - 2. Double magazine pouch (plain black leather) and magazines
 - 3. Handcuff case (plain black leather) and handcuffs
 - 4. Holster (plain black leather-like) and Bureau approved firearm

1018.4 RANK INSIGNIA AND PATCHES

Shoulder Patches - The authorized shoulder patch supplied by the Bureau shall be machine stitched to the sleeves of all uniform shirts and jackets, three-quarters of an inch below the shoulder seam of the shirt.

Supervisor (Class A)

The supervisor rank insignia shall be a silver and black chevron consisting of three stripes, a rocker and a star. Cover will be a navy cover with two silver P-buttons and Bureau approved cap piece.

Commander (Class A)

Uniform Regulations

The command rank insignia shall be two, five-point stars joined by a small bar so they are 5/8 inches from center to center. The insignia shall be worn centered on each side of the collar. Cover will be navy cover with black high gloss strap above the brim, two silver P-buttons and Bureau approved cap piece.

Assistant Chief (Class A)

The Assistant Chief rank insignia shall be three, five point stars joined by a small bar so they are 5/8 inches from center to center. Cover will be navy cover with silver ribbon, oak leaf clusters embroidered on the brim of the hat and the Bureau approved cap piece. Ike jacket.

Chief (Class A)

The Chief rank insignia shall be four, five point stars joined by a small bar so they are 5/8 inches from center to center. The insignia shall be worn centered on each side of the collar. Cover will be a navy cover with silver ribbon, oak leaf clusters embroidered on the brim of the hat and the Bureau approved cap piece. Ike jacket.

1018.5 CASUAL BUSINESS ATTIRE POLO

The OCDA Bureau polo shirt consists of the following:

- a. Sworn Personnel: Black short sleeve Cornerstone polo with OCDA logo embroidered on left chest.
- b. Non-Sworn Personnel: Navy blue short sleeve Cornerstone polo with OCDA logo embroidered on left chest.
- c. Long sleeve polo shirt with OCDA logo embroidered on left chest.
- d. Additional authorized colors for all employees (purchased at employee's expense):
 1. Gray
 2. Dark Navy
 3. Black

This polo is not to be worn as the Class C Bureau enforcement uniform.

Any other use of the OCDA logo must be approved by the Professional Standards Division.

1018.6 POLITICAL ACTIVITIES, ENDORSEMENTS, AND ADVERTISEMENTS

While employees are not restricted from engaging in the following activities as private citizens or as authorized members of a recognized bargaining unit, unless specifically authorized by the Bureau Chief, agency employees may not wear any part of the uniform, be photographed wearing any part of the uniform, utilize a department badge, patch or other official insignia, or cause to be posted, published, or displayed, the image of another employee, or identify himself/herself as an employee of the Orange County District Attorney's Office to do any of the following:

- a. Endorse, support, oppose, or contradict any social issue, cause, or religion.
- b. Endorse, support, or oppose, any product, service, company or other commercial entity.

Uniform Regulations

- c. Appear in any commercial, social, or non-profit publication, or any motion picture, film, video, public broadcast, or any website.

1018.7 UNIFORM MAINTENANCE AND REPLACEMENT

1. Maintenance of issued items shall be the financial responsibility of the Bureau. For example, repairs due to normal wear and tear.
2. Replacement of items listed in this order shall be done as follows:
 - a. When the issued item is no longer functional because of normal wear and tear, the Bureau bears the full cost of replacement
 - b. When the issued item is no longer functional because of damage in the course of the employee's duties, it shall be replaced following Bureau Professional Standards Division procedures

Line-of-Duty Deaths and Life-Threatening Injuries / Non-Line-of

1019.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance to members of the Orange County District Attorney Bureau of Investigation in the event of the death of a member occurring in the line of duty and to direct the Bureau in providing proper support for the member's survivors.

The Bureau Chief or designee may also apply some or all of this policy for a non-line-of-duty member death, or in situations where members are injured in the line of duty and the injuries are life-threatening.

1019.1.1 DEFINITIONS

Definitions related to this policy include:

Line-of-duty death - The death of a sworn member during the course of performing law enforcement-related functions while on or off-duty, or a non-sworn member during the course of performing assigned duties.

For a sworn member, a line-of-duty death includes death that is the direct and proximate result of a personal injury sustained in the line of duty (34 USC § 10281).

Survivors - Immediate family members of the deceased member, which can include spouse, children, parents, other next of kin, or significant others. The determination of who should be considered a survivor for purposes of this policy should be made on a case-by-case basis given the individual's relationship with the member and whether the individual was previously designated by the deceased member.

1019.2 POLICY

It is the policy of the Orange County District Attorney Bureau of Investigation to make appropriate notifications and to provide assistance and support to survivors and coworkers of a member who dies in the line of duty.

It is also the policy of this Bureau to respect the requests of the survivors when they conflict with these guidelines, as appropriate.

1019.3 INITIAL ACTIONS BY COMMAND STAFF

1. Upon learning of a line-of-duty death, the deceased member's supervisor should provide all reasonably available information to the Division Commander.
 1. Communication of information concerning the member and the incident should be restricted to secure networks to avoid interception by the media or others (refer to the Media Relations Officer section of this policy)

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2. Proper notifications should be made to the appropriate associations (AOCDS/ACLEMS /OCEA).
2. The Commander should ensure that notifications are made in accordance with the Officer-Involved Shootings and Deaths Policy § 305 and Major Incident Notification Policy § 320 as applicable.
3. If the member has been transported to the hospital, the Bureau Chief or authorized designee should respond to the hospital to assume temporary responsibilities as the Hospital Liaison.
4. The Bureau Chief, or the authorized designee, should assign members to handle survivor notifications and assign members to the roles of Hospital Liaison (to relieve the temporary Hospital Liaison) and the Bureau Liaison as soon as practicable (see the Notifying Survivors section and the Bureau Liaison and Hospital Liaison subsections in this policy).

1019.4 NOTIFYING SURVIVORS

Survivors should be notified as soon as possible in order to avoid the survivors hearing about the incident in other ways.

The Bureau Chief or the authorized designee should review the deceased member's emergency contact information and make accommodations to respect the member's wishes and instructions specific to notifying survivors. However, notification should not be excessively delayed because of attempts to assemble a notification team in accordance with the member's wishes.

The Bureau Chief, Commander, or the authorized designee should select at least two members to conduct notification of survivors.

Notifying members should:

- a. Make notifications in a direct and compassionate manner, communicating as many facts of the incident as possible, including the current location of the member. Information that is not verified should not be provided until an investigation has been completed.
- b. Determine the method of notifying surviving children by consulting with other survivors and taking into account factors such as the child's age, maturity, and current location (e.g., small children at home, children in school).
- c. Plan for concerns such as known health concerns of survivors or language barriers.
- d. Offer to transport survivors to the hospital, if appropriate. Survivors should be transported in Bureau vehicles. Notifying members shall inform the Hospital Liaison over a secure network that the survivors are on their way to the hospital. Notifying members should remain at the hospital while the survivors are present.
- e. When survivors are not at their residences or known places of employment, actively seek information and follow leads from neighbors, other law enforcement, postal authorities, and other sources of information in order to accomplish notification in as timely a fashion as possible. Notifying members shall not disclose the reason for their contact other than a family emergency.
- f. If making notification at a survivor's workplace, ask a workplace supervisor for the use of a quiet, private room to meet with the survivor. Members shall not inform the workplace supervisor of the purpose of their visit other than to indicate that it is a family emergency.

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- g. Offer to call other survivors, friends, Counseling Team International or clergy to support the survivors and to avoid leaving survivors alone after notification.
- h. Assist the survivors with meeting child care or other immediate needs.
- i. Provide other assistance to survivors and take reasonable measures to accommodate their needs, wishes, and desires. Care should be taken not to make promises or commitments to survivors that cannot be met.
- j. Inform the survivors of the name and phone number of the Survivor Support Liaison (see the Survivor Support Liaison section of this policy), if known, and the Bureau Liaison.
- k. Provide their contact information to the survivors before departing.
- l. Document the survivors' names and contact information, as well as the time and location of notification. This information should be forwarded to the Bureau Liaison.
- m. Inform the Bureau Chief or the authorized designee once survivor notifications have been made so that other Orange County District Attorney members may be apprised that survivor notifications are complete.

1019.4.1 OUT-OF-AREA NOTIFICATIONS

The Bureau Liaison should request assistance from law enforcement agencies in appropriate jurisdictions for in-person notification to survivors who are out of the area.

- a. The Bureau Liaison should contact the appropriate jurisdiction using a secure network and provide the assisting agency with the name and telephone number of the Bureau member that the survivors can call for more information following the notification by the assisting agency.
- b. The Bureau Liaison may assist in making transportation arrangements for the member's survivors, but will not obligate the Bureau to pay travel expenses without the authorization of the Bureau Chief.

1019.5 NOTIFYING BUREAU MEMBERS

Supervisors or members designated by the Bureau Chief are responsible for notifying Bureau members of the line-of-duty death as soon as possible after the survivor notification is made. Notifications and related information should be communicated in person or using secure networks and should not be transmitted over the radio.

Members having a close bond with the deceased member should be notified of the incident in person. Supervisors should consider assistance (e.g., peer support, modifying work schedules, approving sick leave) for members who are especially affected by the incident.

Supervisors should direct members not to disclose any information outside the Bureau regarding the deceased member or the incident.

1019.6 LIAISONS AND COORDINATORS

The Bureau Chief or the authorized designee should select members to serve as liaisons and coordinators to handle responsibilities related to a line-of-duty death, including, but not limited to:

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- a. Bureau Liaison
- b. Hospital Liaison
- c. Survivor Support Liaison
- d. Critical Incident Stress Management (CISM) coordinator (Counseling Team International)
- e. Funeral Liaison
- f. Mutual aid coordinator
- g. Benefits Liaison
- h. Finance coordinator

Liaisons and coordinators will be directed by the Bureau Liaison and should be given sufficient duty time to complete their assignments.

Members may be assigned responsibilities of more than one liaison or coordinator position depending on available Bureau resources. The Bureau Liaison may assign separate liaisons and coordinators to accommodate multiple family units, if needed. The Bureau should consider seeking assistance from surrounding law enforcement agencies to fill liaison and coordinator positions, as appropriate.

1019.6.1 BUREAU LIAISON

The Bureau Liaison should be a Division Commander or of sufficient rank to effectively coordinate Bureau resources, and should serve as a facilitator between the deceased member's survivors and the Bureau. The Bureau Liaison reports directly to the Bureau Chief. The Bureau Liaison's responsibilities include, but are not limited to:

- a. Directing the other liaisons and coordinators in fulfilling survivors' needs and requests. Consideration should be given to organizing the effort using the National Incident Management System (NIMS).
- b. Establishing contact with survivors within 24 hours of the incident and providing them contact information.
- c. Advising survivors of the other liaison and coordinator positions and their roles and responsibilities.
- d. Identifying locations that will accommodate a law enforcement funeral and presenting the options to the appropriate survivors, who will select the location.
- e. Coordinating all official law enforcement notifications and arrangements.
- f. Making necessary contacts for authorization to display flags at half-staff.
- g. Reminding Bureau members of appropriate information-sharing restrictions regarding the release of information that could undermine future legal proceedings.
- h. Coordinating security checks of the member's residence as necessary and reasonable.
- i. Serving as a liaison with visiting law enforcement agencies during memorial and funeral services.

1019.6.2 HOSPITAL LIAISON

The Hospital Liaison should work with hospital personnel to:

1. Establish a command post or incident command system, as appropriate, to facilitate management of the situation and its impact on hospital operations (e.g., influx of people, parking).

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2. Arrange for appropriate and separate waiting areas for:
 1. The survivors and others whose presence is requested by the survivors.
 2. Bureau members and friends of the deceased member.
 3. Media personnel.
3. Ensure, as practicable, that any suspects who are in the hospital and their families or friends are not in proximity to the member's survivors or Orange County District Attorney members (except for members who may be guarding a suspect).
4. Arrange for survivors to receive timely updates regarding the member before information is released to others.
5. Arrange for survivors to have private time with the member, if requested.
 1. The Hospital Liaison or hospital personnel may need to explain the condition of the member to the survivors to prepare them accordingly.
 2. The Hospital Liaison should accompany the survivors into the room, if requested.
6. Stay with survivors and provide them with other assistance as needed at the hospital.
7. If applicable, explain to the survivors why an autopsy may be needed.
8. Make arrangements for hospital bills to be directed to the Bureau, that the survivors are not asked to sign as guarantor of payment for any hospital treatment, and that the member's residence address, insurance information, and next of kin are not included on hospital paperwork.

Other responsibilities of the Hospital Liaison include but are not limited to:

- Arranging transportation for the survivors back to their residence.
- Working with investigators to gather and preserve the deceased member's equipment and other items that may be of evidentiary value.
- Documenting their actions at the conclusion of duties.

1019.6.3 SURVIVOR SUPPORT LIAISON

The Survivor Support Liaison should work with the Bureau Liaison to fulfill the immediate needs and requests of the survivors of any member who has died in the line of duty, and serve as the long-term Bureau contact for survivors.

The Survivor Support Liaison should be selected by the deceased member's Division Commander. The following should be considered when selecting the Survivor Support Liaison:

- The liaison should be an individual the survivors know and with whom they are comfortable working.
- The selection may be made from names recommended by the deceased member's supervisor and /or coworkers. The deceased member's partner or close friends may not be the best selections for this assignment because the emotional connection to the member or survivors may impair their ability to conduct adequate liaison duties.
- The liaison must be willing to assume the assignment with an understanding of the emotional and time demands involved.

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The responsibilities of the Survivor Support Liaison include but are not limited to:

1. Arranging for transportation of survivors to hospitals, places of worship, funeral homes, and other locations, as appropriate.
2. Communicating with the Bureau Liaison regarding appropriate security measures for the family residence, as needed.
3. If requested by the survivors, providing assistance with instituting methods of screening telephone calls made to their residence after the incident.
4. Providing assistance with travel and lodging arrangements for out-of-town survivors.
5. Returning the deceased member's personal effects from the Bureau and the hospital to the survivors. The following should be considered when returning the personal effects:
 1. Items should not be delivered to the survivors until they are ready to receive the items.
 2. Items not retained as evidence should be delivered in a clean, unmarked box.
 3. All clothing not retained as evidence should be cleaned and made presentable (e.g., items should be free of blood or other signs of the incident).
 4. The return of some personal effects may be delayed due to ongoing investigations.
6. Assisting with the return of bureau-issued equipment that may be at the deceased member's residence.
 1. Unless there are safety concerns, the return of the equipment should take place after the funeral at a time and in a manner considerate of the survivors' wishes.
7. Working with the CISM coordinator to ensure survivors have access to available counseling services.
8. Coordinating with the bureau's Media Relations Officer to brief the survivors on pending press releases related to the incident and to assist the survivors with media relations in accordance with their wishes (see the Media Relations Officer section of this policy).
9. Briefing survivors on investigative processes related to the line-of-duty death, such as criminal, internal, and administrative investigations.
10. Informing survivors of any related criminal proceedings and accompanying them to such proceedings.
11. Introducing survivors to prosecutors, victim's assistance personnel, and other involved personnel as appropriate.
12. Maintaining long-term contact with survivors and taking measures to sustain a supportive relationship (e.g., follow-up visits, phone calls, cards on special occasions, special support during holidays).
13. Inviting survivors to Bureau activities, memorial services (e.g., as applicable, the Annual Candlelight Vigil at the National Law Enforcement Officers Memorial), or other functions as appropriate.

Survivor Support Liaisons providing services after an incident resulting in multiple members being killed should coordinate with and support each other through conference calls or meetings as necessary.

The Bureau recognizes that the duties of a Survivor Support Liaison will often affect regular assignments over many years, and is committed to supporting members in the assignment.

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If needed, the Survivor Support Liaison should be issued a personal communication device (PCD) owned by the Bureau to facilitate communications necessary to the assignment. The Bureau-issued PCD shall be used in accordance with the Personal Communication Devices Policy.

1019.6.4 CRITICAL INCIDENT STRESS MANAGEMENT COORDINATOR

Critical incident stress management will be handled by the Counseling Team International. Arrangements should be made by the Professional Standards Division or designee.

1019.6.5 FUNERAL LIAISON

The Funeral Liaison should work with the Bureau Liaison, Survivor Support Liaison and survivors to coordinate funeral arrangements to the extent the survivors wish. The Funeral Liaison's responsibilities include, but are not limited to:

1. Assisting survivors in working with the funeral director regarding funeral arrangements and briefing them on law enforcement funeral procedures.
2. Completing funeral notification to other law enforcement agencies.
3. Coordinating the funeral activities of the Bureau, including, but not limited to the following:
 1. Honor Guard
 1. Casket watch
 2. Color guard
 3. Pallbearers
 4. Bell/rifle salute
 2. Bagpipers/bugler
 3. Uniform for burial
 4. Flag presentation
 5. Last radio call
4. Briefing the Bureau Chief and command staff concerning funeral arrangements.
5. Assigning an investigator to remain at the family home during the viewing and funeral.
6. Arranging for transportation of the survivors to and from the funeral home and interment site using Bureau vehicles and drivers.
7. Addressing event-related logistical matters (e.g., parking visitor overflow, public assembly areas).

1019.6.6 MUTUAL AID COORDINATOR

The mutual aid coordinator should work with the Bureau Liaison and the Funeral Liaison to request and coordinate any assistance from outside law enforcement agencies needed for, but not limited to:

- a. Traffic control during the deceased member's funeral.
- b. Area coverage so that as many Orange County District Attorney members can attend funeral services as possible.
- c. Coordinate with the member's prior agency, if necessary.

The mutual aid coordinator should perform duties in accordance with the Outside Agency Assistance Policy § 318.

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When practicable, the Bureau Chief or designee should appoint a mutual aid coordinator to identify external resources in advance of any need (e.g., regional honor guard teams, county or state-wide resources).

1019.6.7 BENEFITS LIAISON

The Benefits Liaison should provide survivors with information concerning available benefits and will assist them in applying for benefits, including making proper notification to the appropriate association (AOCDS/OCEA/ACLEMS). Responsibilities of the Benefits Liaison include, but are not limited to:

1. Confirming the filing of workers' compensation claims and related paperwork (see the Occupational Disease and Work-Related Injury Reporting Policy § 1017).
2. Researching and assisting survivors with application for federal government survivor benefits, such as those offered through the following:
 - a. Public Safety Officers' Benefits (PSOB) Programs, including financial assistance available through the Public Safety Officers' Educational Assistance (PSOEA) Program, as applicable (34 USC § 10281 et seq.).
 - b. Social Security Administration.
 - c. Department of Veterans Affairs.
3. Researching and assisting survivors with application for state and local government survivor benefits such as:
 - a. Education benefits (Education Code § 68120)
 - b. Health benefits (Labor Code § 4856)
 - c. Workers' compensation death benefit (Labor Code § 4702)
4. Researching and assisting survivors with application for other survivor benefits such as:
 - a. Private foundation survivor benefits programs.
 - b. Survivor scholarship programs.
5. Researching and informing survivors of support programs sponsored by Bureau associations and other organizations.
6. Documenting and informing survivors of inquiries and interest regarding public donations to the survivors.
 - a. If requested, working with the finance coordinator to assist survivors with establishing a process for the receipt of public donations.
7. Providing survivors with a summary of the nature and amount of benefits applied for, including the name of a contact person at each benefit office. Printed copies of the summary and benefit application documentation should be provided to affected survivors.
8. Maintaining contact with the survivors and assisting with subsequent benefit questions and processes as needed.

1019.6.8 FINANCE COORDINATOR

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The finance coordinator should work with the Bureau Chief and the Bureau Liaison to manage financial matters related to the line-of-duty death. The finance coordinator's responsibilities include, but are not limited to:

1. Establishing methods for purchasing and monitoring costs related to the incident.
2. Providing information on finance-related issues, such as:
 1. Paying survivors' travel costs if authorized.
 2. Transportation costs for the deceased.
 3. Funeral and memorial costs.
 4. Related funding or accounting questions and issues.
3. Working with the Benefits Liaison to establish a process for the receipt of public donations to the deceased member's survivors.
 1. For AOCDS members, contact AOCDS to coordinate donations through the AOCDS memorial.
4. Providing accounting and cost information as needed.

1019.7 MEDIA RELATIONS

In the event of a line-of-duty death, the Orange County District Attorney's Media Relations should be the Bureau's contact point for the media. As such, Media Relations should coordinate with the Bureau Liaison to:

1. Collect and maintain the most current incident information and determine what information should be released.
2. Ensure that Bureau members are instructed to direct any media inquiries to Media Relations.
3. Prepare necessary press releases.
 1. Ensure coordination with other entities having media roles (e.g., outside agencies involved in the investigation or incident).
 2. Ensure that important public information is disseminated, such as information on how the public can show support for the Bureau and deceased member's survivors.
4. Arrange for community and media briefings by the Bureau Chief or the authorized designee as appropriate.
5. Respond, or coordinate the response, to media inquiries.
6. If requested, assist the member's survivors with media inquiries.
 1. Brief the survivors on handling sensitive issues such as the types of questions that reasonably could jeopardize future legal proceedings.
7. Release information regarding memorial services and funeral arrangements to department members, other agencies and the media as appropriate.
8. If desired by the survivors, arrange for the recording of memorial and funeral services via photos and/or video.

The identity of deceased members should be withheld until the member's survivors have been notified. If the media has obtained identifying information for the deceased member prior to survivor notification,

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Media Relations should request that the media withhold the information from release until proper notification can be made to survivors. Media Relations should ensure that media are notified when survivor notifications have been made.

1019.8 INVESTIGATION OF THE INCIDENT

The Bureau Chief should make necessary assignments to conduct thorough investigations of any line-of-duty death and may choose to use the investigation process outlined in the Officer-Involved Shootings and Deaths Policy § 305.

Investigators from other agencies may be assigned to work on any criminal investigation related to line-of-duty deaths. Partners, close friends, or personnel who worked closely with the deceased member should not have any investigative responsibilities because such relationships may impair the objectivity required for an impartial investigation of the incident.

Involved Bureau members should be kept informed of the progress of the investigations and provide investigators with any information that may be pertinent to the investigations.

1019.9 NON-LINE-OF-DUTY DEATH

The Bureau Chief may authorize certain support services for the death of a member not occurring in the line of duty.

HIV TESTING PROCEDURE

1020.1 PURPOSE AND SCOPE

The purpose of this policy is to provide for the reporting of contacts with the bodily fluids of individuals and an HIV testing procedure in accordance with the Legislature's declaration of a public health crisis in Penal Code § 7500, et. seq.

1020.2 REPORTING REQUIREMENTS

Any employee who believes that he or she came into contact with bodily fluids of an individual who has been arrested or taken into custody shall complete a California Department of Public Health form (CDPH 8479), obtained through the County of Orange Health Care Agency, Public Health/Disease Control or from the California Department of Public Health's [website](#). This form includes the names of witnesses to the incident, names of persons involved in the underlying incident, and if feasible, any written statements from these parties. This form shall be in addition to any other reports related to the underlying incident (Penal Code § 7510).

The employee's form CDPH 8479 shall be submitted by the end of the working day during which the incident occurred, or if not practicable, as soon as possible, but no longer than two days after the incident, unless waived by the County's Chief Medical Officer.

Upon completion of form CDPH 8479, it and all available related reports shall be forwarded immediately to the County's Chief Medical Officer.

CDPH 8479 is used for nothing other than the mandatory reporting requirements set forth per Penal Code § 7554(b). This information will be entered into a database utilized by the California Department of Public Health Office of AIDS (CDPH OA) that tracks where exposures occur. CDPH 8479 does not require any employee identifying information.

1020.2.1 CONFIDENTIALITY OF ALL REPORTS

All information obtained and reported pursuant to this procedure shall be kept confidential and may not be released except as provided by law per Penal Code § 7517.

1020.2.2 MISDEMEANOR TO FILE FALSE REPORT

Any employee who willfully files a false form CDPH 8479 or a false request for HIV testing may be subject to discipline as well as misdemeanor criminal sanctions (Penal Code § 7540).

1020.3 REQUEST FOR HIV TESTING

HIV TESTING PROCEDURE

Any employee who desires that the individual be tested for HIV shall complete a California Department of Public Health form (CDPH 8459), obtained through the California Department of Public Health's website. The name of the individual whom the officer requests to be tested should be listed in section 10 of the CDPH 8459.

Once completed, CDPH 8459 shall be sent to the County Health Officer (Risk Management). Risk Management will order the testing and if approved, will receive the results and notify the subject tested if their result is positive. All results will remain confidential and not be released to anyone other than the subject tested.

For more information, refer to the California Department of Public Health's website.

1020.4 AVAILABLE COUNSELING

In addition to any other available employee assistance programs, personal counseling may be available through the Chief Medical Officer to any law enforcement employee who has filed a form CDPH 8479.

Sworn members of the Bureau may contact AOCDS for a referral to a mental health law enforcement specialty professional at no cost to the member. All communications with the mental health law enforcement specialty professional are confidential, separate and apart from the Bureau and the County.

1020.5 PROCEDURE TO DETERMINE TESTING

Within five (5) calendar days of receipt of any form CDPH 8459, regardless of whether or not a request for testing was made, the County's Chief Medical Officer shall determine whether or not the involved individual shall be required to submit to HIV testing.

Any individual ordered by the Chief Medical Officer to submit to HIV testing has three (3) calendar days to appeal such an order by submitting form CDPH 8457. If no appeal is filed in a timely manner, the order of the Chief Medical Officer shall become final.

Any appeal of the Chief Medical Officer's order may be appealed by the individual or the involved employee to the Superior Court which is required to review the matter as expeditiously as possible (Penal Code § 7516.5).

1020.6 TESTING PROCEDURE

In the event that an individual is ordered to be tested for HIV, such tests shall consist of a blood sample withdrawn in a medically approved manner by a licensed physician, nurse, medical technician or phlebotomist (Penal Code § 7530).

All test samples shall be submitted to a licensed medical laboratory which has been approved by the California Department of Public Health for the conducting of HIV testing.

1020.6.1 REFUSAL TO SUBMIT TO TESTING

HIV TESTING PROCEDURE

Any person who has been ordered to submit to HIV testing and, who refuses to submit to such testing, shall be subject to revocation of bail, probation or other sentence (Penal Code § 7519(a)).

The refusal of any probationer or parolee to submit to required HIV testing shall be considered a violation of probation or parole.

1020.6.2 TEST RESULTS

Any employee who had direct contact with the bodily fluids of an individual who is determined to have tested positive for HIV or AIDS shall receive confidential notification from the Chief Medical Officer.

1020.7 LAW ENFORCEMENT VICTIM

In the event an employee is a victim of a crime, such as an assault, they shall comply with Penal Code § 1524.1. This will allow the employee to request the court issue a search warrant for the purpose of testing the accused's blood or oral mucosal transudate saliva with any HIV test, as defined in Health and Safety § 120775.

For assistance in completing the proper documentation, contact the assistant district attorney assigned to the Sexual Assault Unit and/or Orange County Health Care Agency.

Nepotism and Conflicting Relationships

1021.1 PURPOSE AND SCOPE

The purpose of this policy is to ensure equal opportunity and effective employment practices by avoiding actual or perceived favoritism, discrimination or actual or potential conflicts of interest by or between members of this Bureau. These employment practices include: recruiting, testing, hiring, promotion, compensation, assignment, use of facilities, access to training opportunities, supervision, performance appraisal, discipline and workplace safety and security.

1021.1.1 DEFINITIONS

Business relationship - Serving as an employee, independent contractor, compensated consultant, owner, board member, shareholder, or investor in an outside business, company, partnership, corporation, venture or other transaction, where the Bureau employee's annual interest, compensation, investment or obligation is greater than \$250.

Conflict of interest - Any actual, perceived or potential conflict of interest in which it reasonably appears that a Bureau employee's action, inaction or decisions are or may be influenced by the employee's personal or business relationship.

Nepotism - The practice of showing favoritism to relatives over others in appointment, employment, promotion or advancement by any public official in a position to influence these personnel decisions.

Personal relationship - Includes marriage, cohabitation, dating or any other intimate relationship beyond mere friendship.

Public official - A supervisor, officer or employee vested with authority by law, rule or regulation or to whom authority has been delegated.

Relative - An employee's father, father-in-law, mother, mother-in-law, stepparent, brother, sister, wife, husband, domestic partner, child, stepchild, grandchild, grandparent or legal guardian.

Subordinate - An employee who is subject to the temporary or ongoing direct or indirect authority of a supervisor.

Supervisor - An employee who has temporary or ongoing direct or indirect authority over the actions, decisions, evaluation and/or performance of a subordinate employee.

1021.2 RESTRICTED DUTIES AND ASSIGNMENTS

Personal or business relationships between employees may occur, however, in order to avoid nepotism or other inappropriate conflicts, the following reasonable restrictions shall apply (Government Code § 12940):

Nepotism and Conflicting Relationships

- a. Employees are prohibited from directly supervising, occupying a position in the line of supervision or being directly supervised by any other employee who is a relative or with whom they are involved in a personal or business relationship.
 1. If circumstances require that such a supervisor/subordinate relationship exist temporarily, the supervisor shall make every reasonable effort to defer matters pertaining to the involved employee to an uninvolved supervisor.
 2. When personnel and circumstances permit, the Bureau will attempt to make every reasonable effort to avoid placing employees in such supervisor/subordinate situations. The Bureau, however, reserves the right to transfer or reassign any employee to another position within the same classification in order to avoid conflicts with any provision of this policy.
- b. Employees are prohibited from participating in, contributing to or recommending promotions, assignments, performance evaluations, transfers or other personnel decisions affecting an employee who is a relative or with whom they are involved in a personal or business relationship.
- c. Whenever possible, supervisors and other trainers will not be assigned to train relatives. Supervisors and other trainers are prohibited from entering into or maintaining personal or business relationships with any employee they are assigned to train until such time as the training has been successfully completed and the employee is off probation.
- d. To avoid actual or perceived conflicts of interest, members of this Bureau shall refrain from developing personal or financial relationships with victims, witnesses or other individuals during the course of any open/active case or any ongoing investigation being conducted by the Bureau or in conjunction with an outside agency. If an employee is currently involved in a personal or financial relationship with a victim, witness or other individual during the course of any open/active case or any ongoing investigation being conducted by the Bureau or in conjunction with an outside agency, the employee must immediately notify his/her supervisor.
- e. Except as required in the performance of official duties or in the case of relatives, employees shall not develop a personal or financial relationships with any individual they know or reasonably should know is under criminal investigation, is a convicted felon, parolee, fugitive or registered sex offender or who engages in serious violations of state or federal laws.

1021.2.1 EMPLOYEE RESPONSIBILITY

Prior to or immediately after entering into any personal or business relationship or other circumstance which the employee knows or reasonably should know could create a conflict of interest, the employee shall promptly notify his/her uninvolved, next highest level of supervisor. Employee disclosure will not be grounds for discipline.

Whenever any employee is placed in circumstances that would require the employee to take enforcement action or provide official information or services to any relative or individual with whom the employee is involved in a personal or business relationship, the employee shall promptly notify his/her uninvolved, immediate supervisor. In the event that no uninvolved supervisor is immediately available, the employee shall promptly notify their next in command to have another uninvolved employee either relieve the involved employee or minimally remain present to witness the action.

Nepotism and Conflicting Relationships

1021.2.2 SUPERVISORY / MANAGEMENT RESPONSIBILITIES

Upon being notified of, or otherwise becoming aware of any circumstance that could result in or constitute an actual or potential violation of this policy, a supervisor shall take all reasonable steps to promptly mitigate or avoid such violations whenever possible. Supervisors shall also promptly notify the Bureau Chief of such actual or potential violations through the chain of command.

1021.3 EXCEPTIONS

Exceptions to this policy may be based on the nature of assignment and job classifications.

Exceptions to this policy may be granted only by the approval of the Bureau Chief.

Specialized or Collateral Duty Assignments - Application and S

1022.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the application, evaluation and appointment of sworn and designated non-sworn employees to specialized units or collateral assignments. The appointment shall be based on professional performance, ability, merit and Bureau needs.

1022.2 POLICY

It is the policy of the Bureau to fairly evaluate and select qualified personnel for specialized units or collateral assignments and effectively manage associated administrative processes.

The provisions of this policy shall apply to all task forces, collateral assignments and specialized units. The standard term for all task forces and specialized units is generally five years.

Notwithstanding the procedures described in this policy, the Bureau Chief shall have the authority to assign personnel in any manner deemed advisable for the best interest of the Bureau, including exception to eligibility criteria for, or the extension or reduction of the term of an assignment. Any aforementioned exceptions should be communicated to the members of the Bureau and include the reason(s) when possible.

1022.3 DEFINITIONS

Extension of Assignment: The continuation of service in a specialized unit, beyond the prescribed service term.

Specialized Unit: AB109, Special Assignments, US Marshal, DEA Task Force, Orange County Auto Theft Task Force, Organized Crime, Regional Computer Forensic Laboratory, and other units that may be added requiring specific application for selection.

Collateral Assignment: Drones, ACT (Arrest and Control Tactics), ASP, Range Staff, Threat Assessment Team, TASER Staff, Honor Guard, DPT (Dignitary Protection Team), OIS Backup, SB 230 Team, and other training teams or collateral assignments established for an ongoing duration.

1022.4 ELIGIBILITY REQUIREMENTS FOR SPECIALIZED UNITS

Unless otherwise prescribed within Bureau policies, members should have successfully completed at least one year of service with the Bureau in their job classification and must be within good standing to be eligible for appointment to a specialized unit.

1. Except for newly created specialized units, an employee who is in a specialized unit, or who has completed a prior specialized unit assignment within the previous year, should not be considered for appointment to another specialized unit.

Specialized or Collateral Duty Assignments - Application and Selection

1022.5 ADMINISTRATIVE MANAGEMENT / SELECTION

1022.5.1 RESPONSIBILITY

The designated division commander shall be responsible for the administration of specialized units and the associated application processes.

1022.5.2 ANNOUNCEMENT OF OPENING

A memo announcing the opening of a specialized unit shall be issued not less than fifteen calendar days prior to the closing date for "memo of interest" submission. The memo shall include information to help prospective candidates prepare for an interview, if applicable. The information shall be provided to the commander responsible for the open assignment.

1022.5.3 MEMO OF INTEREST

To be considered a candidate for a particular position, members shall submit a "memo of interest" to the individual indicated on the announcement and by the closing date.

- a. Members should include any relevant specialized training, prior assignments and other pertinent background information.
- b. If less than three memos are received for an assignment, the division commander may reopen the position by extending the submission deadline.

1022.5.4 SELECTION PROCESS

Interested members shall submit their memo of interest via their chain of command. The division commander responsible for the division where the vacancy exists will review all the memos and facilitate an interview process for all those eligible in a timely manner.

- a. Upon completion of the interviews, the oral panelists, consisting of 2 Bureau supervisors, will provide the division commander with the names of the top three candidates.
- b. The division commander will present the results of the oral panel in the Command Staff meeting for discussion of the top three candidates.
- c. Interested members may also request a meeting with the division commander for personal feedback on their performance, including areas of strength and areas for improvement.

1022.5.5 RECOMMENDATION

The division commander shall submit his/her recommendation(s) for the vacant position to the Bureau Chief as soon as practical following the conclusion of the interviews. The Bureau Chief will make the final selection.

1022.6 DURATION OF SPECIALIZED UNIT

Members selected for a specialized unit will remain generally for 5 years unless an extension is requested and/or approved by the division commander or Bureau Chief, refer to § 1022.7.

Specialized or Collateral Duty Assignments - Application and Selection

1022.7 EXTENSION OF SPECIALIZED ASSIGNMENT

A member, who desires an extension of his/her specialized assignment, shall request an extension via the chain of command to the division commander.

Consideration by the division commander for the request shall be based on the employee's overall work performance and the recommendations offered by the member's chain of command.

The Bureau Chief can approve an extension, without a member's request, if it meets the needs of the Bureau.

1022.8 TRANSITIONAL TRAINING

It shall be the responsibility of the division commander receiving the "new" member to ensure appropriate transitional training is provided.

The division commander shall evaluate employees returning to a vertical prosecution unit, courts division or professional standards division and arrange for any needed training to reacquaint the member with current operational policies and procedures.

1022.9 COLLATERAL ASSIGNMENTS

A memo announcing the opening of a collateral assignment shall be issued not less than fifteen calendar days prior to the closing date for "memo of interest" submission. The "memo of interest" should be submitted to the supervising investigator responsible for the open collateral assignment. Collateral assignments such as Special Assignments Call-Outs are continuous recruitments and announcement memos will be issued bi-annually.

There is no minimum term requirement for collateral assignments.

Facial Coverings

1023.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for all sworn personnel regarding the restriction of facial coverings when performing their duties except in limited specific circumstances (Government Code § 7289).

This policy also serves as a declaration that the Orange County District Attorney's Bureau of Investigation is committed to transparency, accountability, and public trust. Facial coverings are restricted as set forth in this policy.

1023.1.1 DEFINITIONS

Definitions related to this policy include:

Facial covering - Any opaque mask, garment, helmet, headgear, or other item that conceals or obscures the facial identity of an individual, including but not limited to a balaclava, tactical mask, gaiter, ski mask, and any similar type of facial covering or face-shielding item.

Facial covering does not include:

- A translucent face shield or clear mask that does not conceal the wearer's facial identity and is used in compliance with this policy.
- A N95 medical mask or surgical mask to protect against transmission of disease or infection or any other mask, helmet, or device, including but not limited to air-purifying respirators, full or half masks, or self-contained breathing apparatus necessary to protect against exposure to any toxin, gas, smoke, inclement weather, or any other hazardous or harmful environmental condition.
- A mask, helmet, or device, including but not limited to a self-contained breathing apparatus, necessary for underwater use.
- A motorcycle helmet when worn by an investigator utilizing a motorcycle or other vehicle that requires a helmet for safe operations while in the performance of their duties.
- Eyewear necessary to protect from the use of retinal weapons, including but not limited to lasers.

1023.2 POLICY

It is the policy of the Orange County District Attorney's Bureau of Investigation that facial coverings shall not be worn by investigators in the performance of their duties except as set forth in this policy.

Generalized and undifferentiated fear and apprehension about investigator safety shall not be sufficient to justify the use of facial coverings.

1023.3 FACIAL COVERINGS

Facial Coverings

Facial coverings shall not be worn by investigators when performing their duties except under the following conditions:

- a. Active undercover operations or assignments authorized by a supervisor or court order
- b. Tactical operations where protective gear is required for physical safety
- c. Applicable law governing occupational health and safety authorizes such use (e.g., N95 masks against transmission of disease or infection, self-contained breathing apparatus against exposure to hazardous conditions)
- d. Protection of identity during a prosecution proceeding
- e. Applicable law governing reasonable accommodations authorizes such use

Facial coverings shall only be used when no other reasonable alternative exists, and with the approval of a supervisor. The supervisor shall document the necessity of facial coverings in the appropriate report.

A supervisor shall not knowingly allow an investigator to violate state law or Bureau policy limiting the use of a facial covering.

1023.4 POSTING OF POLICY

The Bureau Chief or the authorized designee shall make this policy publicly available on the Bureau website.

A written challenge regarding this policy shall be forwarded to the Bureau Chief or the authorized designee, who shall then have 90 days to address or correct any alleged deficiencies. Court proceedings may not be initiated by the challenging party until this 90-day period has been completed.

Visible Display of Identification

1024.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for all investigators to be readily identifiable to the public by the visible display of the Bureau name and individual identifying information when performing enforcement duties, except in described limited specific circumstances (Government Code § 7288).

This policy also serves as a declaration that the Orange County District Attorney's Bureau of Investigation is committed to transparency, accountability, and public trust.

1024.1.1 DEFINITIONS

Definitions related to this policy include:

Enforcement duties - Active and planned operations involving the arrest or detention of an individual, or deployment for crowd control purposes.

Visibly display identification - To wear externally on the uniform in a size and location such as to be reasonably visible to a member of the public with whom the investigator interacts.

1024.2 POLICY

It is the policy of the Orange County District Attorney's Bureau of Investigation that all investigators visibly display identification when performing enforcement duties except in circumstances set forth in this policy.

1024.3 VISIBLE DISPLAY OF IDENTIFICATION

Whenever performing enforcement duties, every investigator shall visibly display identification, including the name of this Bureau and either the investigator's name or badge number, or both name and badge number.

This requirement shall not apply under the following conditions:

- a. When investigators are engaged in active undercover operations or investigative activities
- b. When investigators are wearing personal protective equipment that prevents display
- c. When exigent circumstances exist involving an imminent danger to persons or property, the escape of a perpetrator, or the destruction of evidence, including if the investigator is responding to those circumstances while off-duty
- d. When there is a specific, articulable, and particularized reason to believe that identification would pose a significant danger to the physical safety of the investigator

1024.4 POSTING OF POLICY

The Bureau Chief or the authorized designee shall make this policy publicly available on the Bureau website.

OCDA Bureau of Investigation Policy Manual

Law Enforcement Policy

Visible Display of Identification

A written challenge regarding this policy shall be forwarded to the Bureau Chief or the authorized designee, who shall then have 90 days to address or correct any alleged deficiencies. Court proceedings may not be initiated by the challenging party until this 90-day period has been completed.