

**SAN JOAQUIN COUNTY
LAW ENFORCEMENT AGENCIES**

**OFFICER-INVOLVED CRITICAL INCIDENT
PROTOCOL MANUAL**

February 2023

FOREWORD

This updated MOU reflects the continued commitment of the law enforcement agencies of San Joaquin County to professionalism and transparency in the conduct of OICI investigations. It also acknowledges that new investigative techniques, police training, advances in forensic science, and public engagement dictate that the 1994 MOU be modernized for today's world.

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

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

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

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

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

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

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1 **I. DEFINITIONS**

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

3 1. “Officer Involved Critical Incidents” or “Incidents” include “Fatal Incidents” and “Critical
4 Shooting Incidents” as defined in paragraphs #4-22

5 2. “Fatal Incidents”

Incidents occurring in San Joaquin County involving two or more people, in which a
police agency employee is involved and where a “Fatal Injury,” as defined in paragraph 27,
occurs. “Fatal Incidents” include but are not limited to the following situations if a “Fatal
Injury” results:

- 6 a. Intentional and accidental shootings, including police tactical incidents involving
7 specialized response teams.
- 8 b. Intentional and accidental use of any other dangerous or deadly weapons.
- 9 c. Assaults upon police officers; assaults on other police employees who are on duty or
10 are acting for a law enforcement purpose.
- 11 d. Assaults by police employees.
- 12 e. Attempts by police employees to make arrests or to otherwise gain physical control for
13 a law enforcement purpose.
- 14 f. Physical altercations, mutual combat, and domestic violence in which the police
15 employee acts in a private citizen capacity.
- 16 g. Any fatal injury in police custody, including injuries that occur during police
 transport, at a police facility, at the County Jail, and at a courthouse, but excluding
 fatal injuries of prisoners which occur while the inmate is under physician’s treatment
 for a disease or other natural condition which has been diagnosed prior to death and
 which does not involve custodial trauma, custodial suicide, or custodial ingestion of
 toxic substance.
- h. Any fatal injury to a person who is a passenger of a police officer (such as “ride
 alongs,” emergency transports, etc.)
- i. Vehicular collisions, and specifically:
 - 1) any vehicle fatality, which occurs:
 - a) after, although not necessary as a proximate cause of, police gunfire
 directed at the suspect or the suspect vehicle;
 - b) in connection with the use of a vehicle(s) by police as an “enforcement
 intervention” technique intended to apprehend a suspect. (“Enforcement
 intervention” includes vehicle ramming, roadblocks, and forcing a vehicle
 to alter its course by cutting in front of it or by contact.)

17 c) Police pursuits wherein the suspect vehicle which is being pursued by
police vehicle(s) collides with another vehicle, a pedestrian or an
object, where that collision did not result from collision contact
between the suspect vehicle and a police vehicle or from “enforcement
intervention”.

18 d) Any on duty vehicle collision involving a law enforcement vehicle
resulting in death.

19 2) excluding any vehicle fatality, which involves:

20 a) Off duty non-sworn police employees who are not at the time of the
incident acting for an actual, apparent or purported law enforcement
purpose;

21 b) Solo vehicular collisions in which the only injury is suffered by a
police employee who was the driver and sole occupant of a vehicle
which was not involved in a collision with any other occupied vehicle;

22 3. Critical Shooting Incidents

Incidents involving the intentional or accidental discharge of a firearm occurring in San
Joaquin County in which a police employee or an involved citizen is injured. Such
“Shooting Incidents” do not include accidental shootings where both the Involved Law
Enforcement Employee and Involved Citizen are police employees.

23 B. Law Enforcement Employee

This Protocol applies to persons employed with the Police Agencies that are members of this
MOU. This includes members of a law enforcement agency, whether on-duty or off-duty, full-
time or part-time, or reserve, paid or unpaid, acting actually, apparently, or purportedly for a law
enforcement purpose at the time of the OICI.

24 C. “Involved Law Enforcement Employee”

Law Enforcement personnel whose action or actions proximately cause injury or death to another
person.

25 D. “Involved Citizen” or “Injured Party / The Deceased”

Non-Law Enforcement personnel who suffer injury or death as a direct or proximate cause of the
Involved Officer(s)

26 E. “Proximate Cause”

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

- 27 F. "Fatal Injury"
 Death or injury, which is so severe that death is likely to result.
- 28 G. "Member Agencies"
 The law enforcement agencies in San Joaquin County, which are members of this Protocol agreement.
- 29 H. "Venue Agency"
 The Member Agency, or Member Agencies, within whose jurisdiction the Incident occurs. (See paragraphs # 60-77 for Venue determination factors.)
- 30 I. "Employer Agency"
 The Member Agency, by whom the involved police employee is employed or with which he/she is affiliated. In many cases, the Venue Agency will also be the Employer Agency.
- 31 J. "Criminal Investigators"
 Those investigators assigned by the Venue Agency(cies). The Employer Agency(cies), the California Highway Patrol, and the District Attorney's Office to conduct the criminal investigation of the incident.
- 32 K. "Administrative Investigators"
 Those investigators assigned by the Employer Agency to conduct the Administrative Investigation of the Incident. (See paragraphs # 208-220.)

33 **II. INVOCATION OF THIS PROTOCOL**

- 34 A. Automatic and Immediate Invocation:
 This Protocol is automatically effective immediately upon the occurrence of an Officer Involved Critical Incident as defined in paragraphs # 2-22.
- 35 B. Unarmed Civilian Officer Involved Shooting (AB1506)
 In the event of an officer involved shooting of an unarmed civilian (AB 1506) refer to the Attorney General's "Division Of Law Enforcement California Police Shooting Investigation Teams Investigation Procedural Guidelines July 2021."
- 36 C. Optional Invocation:
- 37 1. Each Member Agency of this agreement, when in the capacity of a Venue Agency or Employer Agency may itself invoke this Protocol upon the occurrence of any other sensitive or critical event involving a police employee, which may have possible criminal liability attached. Upon this unilateral invocation, the matter will be investigated under the provisions of this Protocol.

- 38 a. Examples:
39 1) a fatality which is not covered by this Protocol;
40 2) an officer-involved incident, other than a shooting, where the injuries are not fatal
- 41 2. In lieu of invoking this Protocol for optional incidents, the involved Member Agency (cies)
may, of course, investigate the matter by itself or may seek aid from other agencies.

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

To properly recognize and accommodate the various interests and the various rules of law, which may be involved in any incident, investigations of these matters, must be, performed under three separate investigative formats; however, they can be viewed as four concurrent investigations:

43 1. The Criminal Investigation

The Criminal Investigation may be viewed as two intersecting, yet distinct aspects of the OICI. The Criminal Investigation's primary goal is to gather all the facts to allow the appropriate agency to determine the following:

- a. What, if any, criminal activity was perpetrated by the Involved Citizen prior to the OICI and did their actions warrant the use of force by the Involved Law Enforcement Employee.
- b. Was the force used by the Involved Law Enforcement Employee in compliance with the law.

44 2. The Administrative Investigation

45 3. The Medical Examiners Investigation

46 4. The Criminal Investigation:

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

48 2. The "Criminal Investigation Task Force" / "Task Force"

49 a. Non-Custodial Incidents

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

50 b. Custodial Deaths

The criminal investigation of custodial deaths as defined in paragraph # 11 will be performed by criminal investigators from the agencies listed in paragraph # 49

serving as co-participants members of a Task Force formed for each custodial Incident. Additionally, any Member Agency which has police employees involved in obtaining and/or maintaining custody of the-deceased at any time during the chain of custody will be given the option of participating as co-participant members of the Task Force.

51 c. Task Force Teams

Within the Task Force, the criminal investigators will be divided into one or more teams. The number of teams will depend on the complexity of the incident and upon the number of people to be interviewed. Each team will consist of one criminal investigator from the Venue Agency(cies), the Employer Agency(cies), the California Highway Patrol (for incidents within their jurisdiction), and the District Attorney's Office. In the case of custodial deaths, each team will also include criminal investigators from any member Agency given the option to participate under paragraph # 50. The Task Force investigation will be led by a primary team, which is composed of the primary investigator from each of the Task Force agencies.

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

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

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

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

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

57 b. To incidentally provide factual information to the Employer Agency's management for its internal use. (While the Criminal Investigators do not direct their investigative attention to the Administrative concerns, it is recognized that the results of the Criminal Investigation is of proper interest to Employer Agency management for its internal use and the results of the criminal investigation will be fully available for that purpose. (See paragraphs 208-220.)

58 4. The Criminal Investigation is required to follow the rules of law which apply to all criminal proceedings including constitutional, statutory, and case law regarding rights which are covered by the 4th, 5th, 6th, and 14th Amendments of the United States Constitution.

59 5. The Criminal Investigation is performed in a manner that is thorough, fair, complete and professional and is free of conflicts of interest.

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6. Venue Determination:

- a. When an incident occurs in part in two or more jurisdictions, each of those jurisdictions is a Venue Agency.
- b. When an incident occurs on the boundary of two jurisdictions, or at a location where the relevant boundary is not readily ascertainable or is in dispute, the Venue Agency(cies) shall be:
 - 1) The Employer Agency if the Involved Law Enforcement Employee is employed by either boundary agency;
 - 2) Both boundary agencies if the Involved Law Enforcement Employees are employed by both;
 - 3) The agency which has the greater interest in the case by virtue of having the predominant police involvement in the incident or by virtue of having had the majority of acts leading up to the incident occur within its jurisdiction.
- c. For custodial deaths as defined in paragraph #11, the Member Agency having custody of the person at the time his/her distress was first discovered, the Member Agency within whose jurisdiction any fatal stroke was inflicted, and the Member Agency within whose jurisdiction the Involved Citizen dies shall be Venue Agencies.
- d. Special Venue situations- Districts
 - 1) Stockton Unified School District shall be a Venue Agency for incidents occurring on its property. If the SUSD property is within the City of Stockton, the Stockton Police Department shall also be a Venue Agency for such incidents. If the SUSD property is within an unincorporated area of San Joaquin County, the San Joaquin County Sheriff's Office shall also be a Venue Agency for such incidents. (As required by Vehicle Code section 12517.1, the California Highway Patrol shall be a Task Force member agency for all incidents involving school bus accidents.)
 - 2) San Joaquin County Delta College shall be a Venue Agency for incidents occurring on its property.

If the SJDC property is within the City of Stockton, the Stockton Police Department shall also be a Venue Agency for such incidents. If the SJDC property is within an unincorporated area of San Joaquin County, the San Joaquin County Sheriff's Office shall also be a Venue Agency for such incidents. (As required by Vehicle Code section 12517.1, the California Highway Patrol shall be a Task Force member agency for all incidents involving school bus accidents.)
 - 3) The California Highway Patrol shall be a Venue Agency for incidents occurring on an Interstate, State Route or county road.

- 71 4) The University of the Pacific Police shall be a Venue Agency for incidents occurring on its property. If the UOP property is within the City of Stockton, the Stockton Police Department shall also be a Venue Agency for such incidents. If the UOP property is within an unincorporated area of San Joaquin County, the San Joaquin County Sheriff's Office shall also be a Venue Agency for such incidents. (As required by Vehicle Code section 12517.1, the California Highway Patrol shall be a Task Force member agency for all incidents involving school bus accidents.)
- 72 5) The Stockton Port District Police shall be a Venue Agency for incidents occurring on its property. If the Stockton Port District property is within the City of Stockton, the Stockton Police Department shall also be a Venue Agency for such incidents. If the Stockton Port District property is within an unincorporated area of San Joaquin County, the San Joaquin County Sheriff's Office shall also be a Venue Agency for such incidents. (As required by Vehicle Code section 12517.1, the California Highway Patrol shall be a Task Force member agency for all incidents involving school bus accidents.)
- 73 6) The San Joaquin Probation Department shall be a Venue Agency for incidents occurring on its property. If the Probation property is within the City of Stockton, the Stockton Police Department shall also be a Venue Agency for such incidents. If the Probation property is within an unincorporated area of San Joaquin County, the San Joaquin County Sheriff's Office shall also be a Venue Agency for such incidents. (As required by Vehicle Code section 12517.1, the California Highway Patrol shall be a Task Force member agency for all incidents involving school bus accidents.)
- 74 e. If a sworn officer is involved in an incident, which occurs within the jurisdiction of another Member Agency, and if that officer was acting in the performance of his/her duty at the time of the incident, the/a Venue Agency may elect to relinquish its role in the Criminal Investigation to the other Task Force agencies.
- 75 7. When a Venue or Employer Agency lacks sufficient resources, or when it believes it cannot properly investigate an incident for another reason, it has two options:
- 76 a. Obtain criminal investigative assistance from other Member Agency(cies). Borrowed officers would then be assigned to the Criminal Investigation Task Force as members of the requesting agency. The requesting agency will assume general supervisory authority over borrowed officers.
- 77 b. Relinquish criminal investigative responsibility to another Member Agency or to the California Department of Justice.
- 78 8. Vehicle Collision Incidents:
- 79 a. Vehicle collision fatalities shall be investigated by Task Force criminal investigators (see paragraph #49), joined by accident investigation specialists from the

California Highway Patrol (CHP) Multidisciplinary Accident Investigation Team (MAIT) or from another agency when CHP accident investigation specialists are not available. In the event a participating Task Force Agency has traffic collision specialists available, the Venue Agency may elect to utilize these traffic collision specialists to be the lead collision investigators. In this case, CHP investigators may be asked to participate in a support role. CHP investigators will be selected by the on-duty CHP supervisor. The accident investigation specialists have the primary responsibility for documentation, collection, and preservation of physical evidence. Task Force Agency field evidence technicians and accident investigation specialists from member agencies may assist under the supervision of CHP accident investigation specialists.

- 80 b. If the fatality results from a collision that was not accidental (e.g. use of “enforcement intervention” techniques), OR if a vehicle movement was merely incidental to a fatality which was caused by non-vehicular means, the role of the CHP personnel will be limited to investigation of physical movement of the vehicle(s) and to collision reconstruction.

81 9. Scene Security:

Each Agency has initial responsibility for immediately securing crime scene(s) within its territorial jurisdiction. (See paragraphs #'s 84, 109-117 and Attachment A for scene procedures.) This responsibility includes preservation of the integrity of the scene(s) and its/their contents, access control, and the identification and sequestration of witnesses. Responsibility may be changed by mutual agreement as the investigation progresses.

82 10. Responsibility for physical evidence collection, preservation, storage and analysis:

- 83 a. The California Department of Justice Regional Criminalistics Laboratory (hereinafter DOJ Laboratory) will direct and/or coordinate the collection of evidence that will be forensically tested, except in vehicular fatalities (see paragraph # 79). Venue Agency field evidence technicians will serve in a subordinate support role to DOJ with respect to forensic evidence. All other physical evidence will be collected and/or identified by crime scene investigators assigned to the Task Force and by Venue Agency field evidence technicians and will be held at the Venue Agency if different from the Employer Agency until sent to DOJ for analysis.
- 84 b. Pending arrival of DOJ laboratory personnel, there are several important duties to be performed by police field evidence technicians or others (See Attachment B).
- 85 c. In unusual cases, the Task Force agencies may all agree that the DOJ laboratory need not be called to process the scenes) and to collect evidence. The DOJ Laboratory shall be used if any Task Force agency desires.
- 86 d. Prior to final relinquishment of the scene, the Task Force investigators and the criminalists will provide the Administrative Investigators an opportunity to assess the need for further evidence processing.

87 11. Notifications

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

- 88 a. Intra-departmental officers, as required by that agency's procedures.
- 89 b. The Employer Agency.
- 90 c. The Office of the District Attorney. Notification shall be made to the District Attorney's Chief Investigator.
- 91 d. The California Department of Justice Regional Criminalistics Laboratory at (209) 924-6000 during business hours and at (916) 227-3244 or through the Sheriff's Command Center during non-business hours.
- 92 e. For vehicular collision deaths, the California Highway Patrol (see paragraphs #78-80) should be notified through a supervisor at the appropriate field office:
- *Stockton*: (209) 943-8600
 - *Tracy*: Bus. Hrs. (209) 835-8920
Non-Bus. Hrs. (209) 943-8600
(ask for the Tracy Supervisor)
- 93 f. The Medical Examiner's Office upon confirmation of a fatality. This is a required notification. (Body removal can be delayed as necessary for evidence processing.)
- 94 1) A Medical Examiner Investigation is a statutorily mandated investigation. (Government Code § 27491 et seq. and Health & Safety Code § 102850.) Nothing in this MOU is intended to bypass or negate the statutory requirements of a Medical Examiner investigation.
- 95 2) A Medical Examiner inquest (Government Code § 27490 et seq) shall only be initiated pursuant to Government Code section 27491.6 when there is (a) a genuine question categorizing the manner of death as outlined by statute, or (b) a conflict between the Medical Examiner and attending pathologist of the manner of death (as defined by Government Code § 27504; § 27522 (d).)
- 96 3) If the Medical Examiner, in their official capacity, initiates an inquest, they shall formally advise forthwith the District Attorney's Office, Venue Agency, and Employer Agency of the initiation of the Medical Examiner's Inquest, all dates and times of the inquest, and the witnesses to be called.
- 97 g. Member Agencies agree that the notification requirements set forth in Penal Code section 5021 will be deemed satisfied in custodial deaths involving Member Agencies if this Protocol is invoked and the appropriate Member Agencies are promptly notified in accordance with this Protocol and those agencies are involved in the Criminal Investigation as members of the Task Force.

- 98 h. The Venue Agency will also announce when and where briefing will occur. All
members of the OICI Teams will be present at the briefing unless other
accommodations have been made/agreed upon between the Venue Agency and
absent Partner.
- 99 i. All efforts should be made to be present at the Venue Agency determined briefing
location, within an hour of notification.
- 100 12. Scene Procedures (also see Patrol Sergeant's Checklist Attachment A).
- 101 a. Emergency life-saving measures have the first priority.
- 102 b. If a person is transported to a hospital with "Fatal Injuries" as defined in
paragraph #27 or non-fatal gunshot wounds, an officer should accompany that
injured person in the same vehicle in order to:
- 103 1) Locate, preserve, safeguard and maintain the chain of physical evidence.
- 104 2) Obtain a dying declaration (Evidence Code 1242); a spontaneous statement
(Evidence Code 1240); a contemporaneous statement (Evidence Code
1241); a statement of then-existing or
previous mental or physical state (Evidence Code 1250, 1251).
- 105 3) Maintain custody of the person if he/she has been arrested.
- 106 4) Provide information to medical personnel about the incident as relevant to
treatment, and obtain information from medical personnel relevant to the
investigation.
- 107 5) Identify relevant people, including witnesses and medical personnel.
- 108 6) Be available for contacts with the Involved Citizen's family, if appropriate.
- 109 c. The scenes must be secured immediately, with a perimeter established for each
scene that is wide enough to safeguard evidence. In some circumstances an
inner and an outer perimeter are appropriate.
- 110 1) Access to the scene(s) must be limited to only those officials who must
enter for an investigative purpose.
- 111 2) A written log will be established as quickly as possible to identify all
persons entering the scene(s), the time of their entry and exit, and the
reason for entry.
- 112 3) When not needed for life-saving efforts, entry by fire and ambulance
personnel should be restricted to the absolute minimum necessary to
perform the needed duties.
- 113 4) No items shall be moved inside the scene(s) or removed from a scene
without approval of the Task Force and the DOJ Laboratory unless

absolutely necessary for public or officer safety or for preservation of evidence. If removal without approval is necessary, the removal must be witnessed and logged. The log shall state the identity of the person removing the described object, the reason for removal, a witness to the removal, and the time of removal. The item should be photo-graphed prior to removal.

- 114 5) The removal of the body from the scene will be determined by the Medical Examiner after notifying the Venue Agency unless some exigent circumstance exists.
- 115 d. If any type of weapon or instrument was involved in the incident, the supervisor at the scene will promptly see to the security and/or collection of such items, as follows:
- 116 1) If the area is secure, loose weapons or instruments shall be left in place and undisturbed.
- 117 2) If the area is not secure, the supervising officer at the scene shall decide whether the items can be safely left in place or whether prompt removal is necessary. If such items must be moved or removed for protection, they should be photographed in place prior to removal if possible.
- 118 3) If an involved Law Enforcement Employee still has personal possession of a weapon he or she used in the incident, the involved Law Enforcement Employee and any supervising officer should wait, as long as it is safe to do so for DOJ Laboratory personnel to collect and take possession of the involved officer's weapon and duty belt. If an involved officer still has personal possession of a weapon he or she used in the incident and there are extenuating circumstances requiring its removal, the supervising officer at the scene shall promptly obtain possession of the weapon. Side arms should not be removed from their holsters. Obtain the entire gun belt, if necessary, to avoid removing the weapon from its holster. Side arms should be replaced by the supervisor as quickly as possible if the officer so wishes, unless reason dictates otherwise. Side arms should only be removed when an immediate replacement side arm is available.
- 119 4) In shooting cases, the supervising officer at the scene will identify and determine officers who were present at the time of the incident and ensure that all discharged firearms are identified and collected.
- 120 5) The supervising officer at the scene who collects any weapon or instrument due to exigent circumstances shall make note of the following to the extent, he/she can do so without removing the weapon from its holster or otherwise compromising physical evidence:
- 121 a) Readily visible general description and condition of the weapon or instrument;

- 122 b) The appearance and location of any trace evidence adhering to the
weapon or instrument;
- 123 c) The location where the weapon or instrument was first observed by the
supervising officer;
- 124 d) The identity of the person or location from which the weapon or
instrument was received;
- 125 e) In firearms cases, the supervising officer will also make note of whether
the firearm is cocked, has its safety "on" or "off", has its hammer back,
any apparent jamming of either fired or unfired ammunition; the location
and position of the weapon's magazine (e.g., fully or partially inserted,
completely separate from the firearm, missing, etc.), to the extent
possible without removal of the weapon from its holster (see paragraph
#118).
- 126 i) If the mechanism of a firearm is obviously jammed, no
attempt shall be made to unload the weapon or clear the jam.
- 127 ii) If the firearm is cocked (or if a semi-automatic pistol cannot
be determined to be cocked or not), the safety may be put
"on" by the supervising officer, who must make note of that
fact. If the firearm's hammer is back, it may be lowered but
note must be made of that fact.
- 128 f) Any officer who receives a weapon or instrument from another
person or otherwise obtains an evidence weapon or instrument shall
note its serial number if readily visible without removing the
weapon from its holster or compromising physical evidence (see
paragraphs #116-127) and shall maintain the chain of evidence.
- 129 g) Weapons and instruments will not be disturbed in any way other
than as outlined in paragraphs #116-127. They shall not be handled
by anyone other than the supervising officer at the scene and that
officer shall handle them minimally to preserve the exact state of
the weapon or instrument when received.
- 130 6) The collected weapons or instruments shall be transferred to the DOJ laboratory
staff upon their arrival, along with all known relevant information regarding the
weapon.
- 131 7) If the supervising officer at the scene was himself an Involved Law Enforcement
Employee in the Incident, the responsibility for security and/or collection of
weapons and instruments shall rest with an uninvolved supervisor or the next-in-
line uninvolved officer at the scene.
- 132 8) Firearms and holsters which do not need to be retained in evidence, as
determined by the criminal investigators, will be returned to a representative of
the Employer Agency promptly after the DOJ Laboratory has inspected and
tested them. The DOJ Laboratory appreciates that prompt return of officers'

firearms and holsters are important and will return them as soon as possible.

- 133 e. Any other physical evidence at the scene, which is in danger of being contaminated,
destroyed, or removed, must be promptly and effectively observed, recorded and
then protected for subsequent collection. Footprints, fingerprints, volatile
substances, various types of trace evidence adhering to live persons, such as
bloodstains, are examples.
- 134 f. Transporting and Sequestering of Involved Officers:
- 135 1) Officers who were present at the scene at the time of the incident, whether
Involved Law Enforcement Employees or Witnesses will be relieved of their
duties at the scene as soon as possible and shall be sent to their own police
station, unless other suitable and agreeable arrangements are made for them.
Officers not involved in the incident shall be assigned to accompany these
officers, either in a group or individually. Involved Law Enforcement
Employee'(s) should be driven to the station by an uninvolved officer.
- 136 2) If circumstances prohibit the removal of all witnessing and Involved Law
Enforcement Employees from the scene at once, the Involved Law Enforcement
Employees should be relieved first.
- 137 3) An uninvolved officer shall remain with the Involved Law Enforcement
Employees, either in a group or individually, until they can be interviewed. The
sequestering officers are present to ensure that the Involved Law Enforcement
Employees have privacy, that their needs are accommodated, and to ensure the
integrity of the Employees' later statements to investigators by prohibiting
Involved Law Enforcement Employees from discussing the incident among
themselves. They should not be present during confidential (privileged)
conversations (see paragraph #169).
- 138 4) Involved officers and members of special response teams (e.g., SWAT,
Hostage Negotiation Teams, Bomb Task Force, etc.) are not to discuss the
case among themselves, with sequestering officers, or with others, except
their attorney representatives prior to being interviewed by Task Force
criminal investigators.
- 139 5) While awaiting interviews, involved officers are encouraged to relax and
to carefully reflect upon what occurred. They may wish to make notes for
future use, especially for later interviews.
- Officers should remain in the same attire they were wearing at the time of
the incident until they are photographed by the investigative team unless
they are covered in a biological hazard or other exigent circumstances
exist, at which time they should be photographed immediately and
changed. Evidentiary clothing shall be secured by the supervisor to be
turned over to the investigative team.
- 140 6) Sequestered officers are entitled to make personal phone calls.

141 7) Involved Law Enforcement Employee could be allowed a rest period not to
exceed one sleep cycle, prior to being interviewed, if mutually agreed upon by
both the Task Force and Involved Law Enforcement Employee. If there is no
agreement between parties, the Involved Law Enforcement Employee's Agency
will have final say.

142 g. Custodial Death Scenes:

When an incident occurs in a jail facility or other location where inmates may have
witnessed something, inmates should be identified and separated if possible pending
interviews by criminal investigators.

143 13. Selection of Primary Investigators

Selection of the primary investigators by the Task Force Agencies is of great importance:
Generally, the best available investigator(s) should receive the assignment. The
following qualifications are important:

- 144 a. Experience in homicide investigations (or vehicular collisions, if applicable).
Investigation experience in other crimes against persons is helpful.
- 145 b. Ability to effectively interview people of various backgrounds.
- 146 c. Good working knowledge of physical evidence collection and preservation techniques
and an appreciation of the abilities and limitations of scientific evidence.
- 147 d. Good knowledge of police operational procedures and the criminal justice system.
- 148 e. Excellent report writing and communication skills.
- 149 f. Good organizational and supervisory skills.
- 150 g. Respected professionally by those with whom he/she works for being competent,
thorough, objective, fair, and honest.

151 14. Interviewing Civilians

- 152 a. Interviews of civilians will be conducted separately when practical.
- 153 b. Interviews of civilians by Task Force criminal investigators will normally be fully
recorded.

154 15. Interviewing Police Employees

155 a. The Public Safety Officers Procedural Bill of Rights (Hereafter, "The Act")
(Government Code 3300 *et. seq.*) (See Attachment C.) The Act has limited
application to many interviews conducted by Task Force interview teams:

- 156 1) By statutory definition, The Act is applicable only to "Public Safety
Officers" (which is defined in Section 3301 to include most peace officers
in the county except railroad police). Under this definition, The Act is not
applicable to police agency employees who are not peace officers.

However, by contract, MOU, or otherwise, some police agencies may have extended the appropriation of The Act to their non-peace officer employees.

- 157 2) The Act is not applicable to interviews with Public Safety Officers who are being interviewed by an agency other than their Employing Agency.
- 158 3) Section 3303 of The Act (the section which pertains to the conditions and conduct of interrogations of peace officers) is not applicable to interviews with Public Safety Officers when the investigation is concerned solely and directly with “alleged criminal activities,” even when being interviewed by their Employer Agency.
- 159 b. If and when the interview becomes a custodial interrogation, the Miranda cases are applicable.
- 160 c. To ensure proof of voluntariness in a non-custodial interview, the Task Force interviewers may wish to advise certain interviewees of the following:
- 161 1) The interviewee is not in custody and is free to leave at any time.
- 162 2) The interviewee is not obligated to answer any questions asked by the investigators, and no punitive action will be taken against the interviewee if he/she refuses to be interviewed by the Task Force Team.
- 163 d. Government Code section 3304(a) permits the heads of law enforcement agencies to order their officers to cooperate with criminal investigations being performed by other agencies. Failure to comply with such orders may result in a charge of insubordination. When applicable, interviewees may be advised of this provision.
- However, officers will not be compelled by threats of administrative punitive action (or otherwise) to answer questions of Task Force criminal investigators, which would be self-incriminating.
- 164 e. Interviews of police employees will be conducted separately.
- 165 f. Interviews of police employees will normally be fully audio recorded
- 166 g. The interviewees will be considered as witnesses unless the circumstances dictate otherwise.
- 167 h. Police employees have the same rights and privileges regarding Task Force interviews that any other citizen would have, including the right to consult with an attorney prior to an interview and the right to have the attorney present during the interview.
- 168 1) The attorney should be allowed to consult about the facts of the incident privately with only one police employee at a time.
- 169 2) If the police employee consults with someone other than a lawyer, doctor, psychotherapist or priest, or an agent of such professional, or the police employee’s legal spouse, the contents of private conversations between

such individuals and the police employee are not privileged. (However, Government Code 3303(h) prohibits compelling any representative to disclose any information received from an officer who is under investigation for disciplinary matters.)

170 16. Intoxicant Testing

171 a. Criminal Investigation

Police employees have the same rights and privileges that any civilian would have regarding intoxicant testing in a criminal investigation. When Task Force investigators determine that a police employee's state of sobriety is relevant to the Criminal Investigation, they have these options:

- 172 1) Obtain the blood and/or urine and/or breath sample by valid consent.
- 173 2) Obtain a search warrant.
- 174 3) When applicable, utilize Vehicle Code section 23612 for vehicular driving incidents.

175 b. Administrative Investigation

- 176 1) Intoxicant test results obtained by Task Force investigators are available to the Administrative Investigators.
- 177 2) In the event the Task Force does not obtain samples for intoxication testing, the Employer Agency may then seek to obtain samples. The Task Force investigators have the first opportunity, however.
- 178 3) Authority for the Employer Agency to obtain samples includes (1) valid consent and (2) ordering the employee to provide the samples based on the employment relationship. (See paragraph #216 for the rules pertaining to the disclosure of test results on samples obtained by administrative investigators.)

179 c. Miscellaneous

- 280 1) When collecting samples for intoxicant testing, samples of both blood and urine should be obtained for the most complete results.
- 181 2) When collecting samples for intoxicant testing, samples should be collected promptly after the incident for the most meaningful results.
- 182 3) A police employee may volunteer to provide sample(s) for intoxicant testing, even if Task Force and Administrative Investigators haven't obtained samples. Also, a person from whom Task Force or Administrative Investigators have obtained samples may request that another sample be taken for independent testing. The taking of this sample and subsequent testing will not be at the expense of the Task Force or Employer. Such a request will be promptly honored.

- 183 4) All samples obtained from police employees by Task Force criminal investigators shall be analyzed by the California Department of Justice, Bureau of Forensic Services.
- 184 17. Autopsy - Medical Examiner Investigation: The Medical Examiner shall be the Lead Agency in the death investigation and that investigation shall remain within the purview of the Medical Examiner. Only Task Force members shall be allowed to attend the forensic pathological examination of the decedent involved in an OICI. (Government Code § 27522 (f).)
- 185 a. At least one member of the Task Force's primary investigative team will attend the autopsy, as will a District Attorney's representative from the Task Force. Investigators representing other Task Force agencies may also attend.
- 186 b. The autopsy pathologist will receive a complete briefing from Task Force criminal investigators prior to the post-mortem examination. The briefing shall include all information known at that time which may be relevant to the cause, manner and means of death. The briefing shall be attended by at least one member of the Task Force's primary team and a District Attorney's representative.
- 187 c. If DOJ Laboratory supervisors determine that criminalists are available, DOJ Laboratory criminalists will attend the autopsy and the pre-autopsy briefing. If DOJ Laboratory criminalists are in attendance at the autopsy, those criminalists will be responsible for documenting and collecting physical evidence that will be forensically tested by the DOJ Laboratory. Other physical evidence will be collected by Venue Agency field evidence technicians or Task Force criminal investigators in attendance. If DOJ Laboratory criminalists are not in attendance at the autopsy, all evidence will be collected by Venue Agency field evidence technicians or Task Force criminal investigators in attendance. In vehicular collision deaths, the California Highway Patrol will be responsible for documenting and collecting physical evidence with assistance, if appropriate, from the DOJ Laboratory and/or Venue Agency field evidence technicians. (See paragraphs #78-80).
- 188 d. Autopsies will be performed only by board-certified forensic pathologists. If a qualified forensic pathologist is not available, the autopsy will be delayed until one is available.
- 189 18. The District Attorney's Office
- 190 a. The District Attorney's Office has the following roles in Officer-Involved Investigations:
- 191 1) Participating with the Venue and Employer Agency(cies) in the Task Force performing the Criminal Investigation.
- 192 2) Assist and advise the Task Force on various criminal law and criminal procedure issues which may arise, such as Miranda, voluntariness, search and seizure, probable cause to arrest, detentions and releases, elements of crimes, immunity, and legal defenses. The District Attorney's Office will be the sole source of legal advice on issues affecting the Criminal Investigation unless the District Attorney's Office has a legal conflict of interest. In the event of a legal conflict of interest, the Task Force shall seek legal advice from the California Attorney General's Office.

193 3) Upon completion of the Criminal Investigation, analyze the facts of the incident and the applicable law to determine the following: 1) What, if any, criminal laws were broken; 2) Who broke those laws; and 3) Whether there is a reasonable likelihood of conviction. If so, prosecute as appropriate.

The above shall be performed by the California Attorney General's Office when the District Attorney's Office has a legal conflict of interest.

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

195 19. Report writing:

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

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

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

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

200 1) All reports should be completed as soon as possible.

201 2) Venue agency reports Patrol/First Responder/Technicians should be completed within 72 hours of the OICI.

202 3) Thirty days after the OICI, Task Force teams shall meet to discuss each member's progress and need for any additional follow-up investigation.

203 4) One hundred and eighty days after the OICI, each Agency member of the OICI Task Force should submit, whenever practical and possible, its final reports to the Venue Agency.

204 5) If there is a delay in the completion of reports by any Agency member the Venue Agency shall contact the administration of the delinquent Agency to discuss resolution of the reports.

205 6) The Medical Examiner report in any death investigation related to the OICI Investigation should be completed within ninety to one hundred and twenty days of the OICI.

206 7) The District Attorney's Office upon receipt of the final investigation should make every attempt to complete its review and render a finding within 90 days.

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

208 B. Administrative Investigation

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

210 a. Internal Affairs:

Determination of whether its employees violated departmental regulations.

211 b. Agency Improvement:

Determination of the adequacy of its policies, procedures, programs, training, equipment, personnel programs and supervision.

212 c. Government and Community Relations:

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

213 d. Claims and Litigation:

Preparing for administrative claims and/or civil litigation that may be initiated by or against the agency.

214 1. The Employer Agency may use an Administrative Investigation and/or a more specific "civil litigation investigation" format to investigate these concerns as it considers appropriate. While both the Criminal Investigation and the Administrative Investigation are important and should be aggressively pursued, investigative conflicts between the two formats shall be resolved by allowing the Criminal Investigation to have investigative priority. It is intended that this prioritization will preclude competition between the two formats for access to witnesses, physical evidence, and the involved parties, and that it will prevent the Criminal Investigation from being compromised by an untimely exercise of the Employer Agency's Administrative rights.

215 2. The initiation of Administrative Investigations and the extent of those investigations is, of course, solely the responsibility of the Employer Agency.

216 3. Interview statements, physical evidence, toxicology test results and investigative leads which are obtained by Administrative Investigators shall not be revealed to Criminal Investigators without the approval of the District Attorney's Office. (See California Penal Code 832.7; California Government Code 3300 *et. seq.*; Vela v. Superior Court, 208 Cal.App.3d 141; People v. Gwillim 223 Cal.App.3d 1254; Gwillim v. City of San Jose (9th Cir. 1991) 929 F.2d 465) (See paragraph # 192)

- 217 4. The Employer Agency should immediately assign at least one Administrative Investigator upon being notified of the incident. This officer can function as a liaison between the Employer and the Task Force, can gather information for the Agency, and can be the Task Force's contact for personnel matters, even if no actual investigation is then warranted by that officer. If the incident involves a non-member agency, that agency will be invited to assign at least one Administrative Investigator to fulfill the aforementioned functions.
- 218 5. The Task Force will promptly and periodically brief the Administrative Investigator(s) of the Criminal Investigation's progress. The Administrative Investigators will have access to Criminal Investigation briefings, the scene(s), physical evidence, and witness statements.
- 219 6. Administrative Investigators are not bound by all of the same investigative restrictions that apply to Criminal Investigators (see paragraph #58).
- 220 7. A civil investigator of a Member Agency represented in the Task Force may be present for observational purposes during interviews conducted by criminal investigators assigned to the Task Force. However, when the interviewee is a police employee of the civil investigator's agency, the interviewee shall be told the contents of Attachment D at the commencement of the interview to ensure proof of voluntariness. Additionally, if the interviewee is a police employee, regardless of whether the police employee is an employee of the civil investigator's agency, the interviewee shall be given the option of not allowing the civil investigator to be present.

221 **IV. NEWS MEDIA RELATIONS**

- 222 A. The interests of the public's right to know what occurred must be balanced with the requirements of the investigation and with the rights of involved individuals.
- 223 B. As in all other cases, care must be taken to ensure that misleading, erroneous, or false statements are not made.
- 224 C. Agencies and individuals who are not well informed and not intimately involved with the progress and results of the Criminal Investigation should not make statements to the press.
- 225 D. While no agency can be prohibited from making statements to the news media about an incident agencies should strive to consult with other agencies involved, and the following guidelines are established:

226 1. The Venue Agency

The Venue Agency has the responsibility for making press releases about the incident and its investigation for the first 48 hours. If there are multiple Venue Agencies, press releases within the first 48 hours should be done jointly.

Officers in close contact with the Task Force are in the best position to comment about the facts of the case and the progress of the investigation.

227 2. The Employer Agency

If the Employer Agency is not also the Venue Agency, fewer problems will arise, especially at the early stages of the investigation, if the Employer Agency limits its comments to the following areas:

228 a. Information which has been cleared for release by the Task Force.

229 3. The DOJ Laboratory

As a matter of policy, the Department of Justice Regional Criminalistics Laboratory will not issue press releases or answer press inquiries. However, should the Laboratory be inclined to release information, that information will be limited to general laboratory procedures and scientific facts and principles and testing procedures conducted in connection with the incident.

230 4. The Medical Examiner's Office

Unless the deceased's known next of kin have been notified, no information will be released by the Medical Examiner's Office. If the decedent next of kin have been notified, or if the decedent has no known next of kin, the release of information will generally be limited to the following:

231 a. The identity of the deceased, the age of the deceased, and the deceased's city or town of residence.

232 E. If Task Force Investigators determine that the release of a specific piece of information would materially jeopardize the investigation, they shall notify those agencies possessing that knowledge of the hazards of releasing it.

233 F. Interruptions to the investigators will be minimized if the agencies assign particular individuals to be the sole designated contacts with the news media.

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

235 A. Material listed in paragraphs # 236-240, which is created or collected by, or at the request or direction of, Task Force Criminal Investigators (including the DOJ Laboratory), will be made available in a timely manner to those agencies which have an interest in the investigation, including the Administrative Investigators.

236 B. The material will include:

237 1. Reports, written and collected.

238 2. Access to physical evidence.

239 3. Photographs, diagrams, and video recordings.

240 4. Audio recordings.

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

242 **VI. PUBLIC ACCESS TO REPORTS**

243 A. Governmental and Reviewing Bodies

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

244 B. General Public

Investigative reports prepared by the Task Force may be pursuant to Government Code section 6254(f) et seq. The Custodian of Records will be the Venue Agency if different than Employer Agency, and all Public Records Request(s) or requests for reports shall be processed through said agency.

245 C. Confidentiality

The access to Task Force investigative reports in paragraphs #247 and 248 shall be subject to the Superior Court’s TNG order concerning juveniles. The names of persons who provide information confidentially will be redacted.

246 **VII. BODY WORN CAMERAS, VIDEO AND IN-CAR CAMERAS**

247 A. The involved Police Agency Employee(s) may view any video footage of the OICI, including body-worn camera or car camera footage, as per their department policy

248 B. “Video or audio recording that relates to a critical incident,” as defined by Government Code section 6254 (f)(4) et seq (Assembly Bill No. 748, September 30, 2018) may be released after a California Public Records Act request has been made

249 1. The Member Agency in possession of said recording shall determine if withholding the recording is in compliance with Government Code section 6254 (f)(4) (A) and (B) prior to its release.

250 2. The Member Agency in possession of said recording should consult with the District Attorney’s Office prior to its release.

251 **VIII. CRIME SCENE VIEWING**

252 A. Crime scene viewing may be permitted from outside the inner perimeter
as per the involved law enforcement employee's department policy.

253 1. No active inner crime scene perimeter should be entered by the involved law
enforcement employee or the employee's counsel.

255 2. When possible unmanned aerial video footage may be used instead of
physical viewing of the scene.

255 3. If there is no agreement between parties, the Venue Law Enforcement Agency
will have final say.

ATTACHMENT A

ATTACHMENT A

PATROL SERGEANT'S CHECKLIST

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

16. Locate, identify in detail, obtain contact information, and sequester civilian witnesses for detective interviews as possible. If a “witness” won’t stay, get a detailed (preferably audio recorded) statement pinning down his/her knowledge or lack of knowledge.
17. Normally, photographing or videotaping of the scene should not take place prior to the arrival of DOJ Criminalists. However, if the scene cannot be held secure prior to the arrival of DOJ Criminalists, and/or the scene is likely to change, or objects are likely to be moved or destroyed prior to DOJ’s arrival, photographs and/or video should be taken to document the scene. When possible, avoid scene contamination and/or moving items to facilitate photographing.
18. Protect (and collect, if necessary) physical evidence in imminent danger.
19. Start area canvas for: more witnesses; locating relevant vehicles/weapons/people/etc.
20. Determine what responding/scene officers have learned and what they’ve done.
21. Collect your information and thoughts to brief investigators.
22. Those officers that performed or witnessed details but were not actually involved in the incident should be deemed to be periphery or tertiary to the investigation and shall, when appropriate, write a supplemental report concerning their after event actions/involvement or witnessed details and return to duty.

ATTACHMENT B

ATTACHMENT B

DUTIES OF FIELD EVIDENCE TECHNICIANS AT OFFICER INVOLVED INCIDENTS

Introduction

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

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

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

Tasks to be Completed Promptly Prior to the Arrival of DOJ Criminalists

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

Assisting Crime Laboratory Personnel

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

ATTACHMENT C

PUBLIC SAFETY OFFICERS PROCEDURAL BILL OF RIGHTS

**From West's California Government Code, annotated
Revised January 1994**

Chapter 9.7

PUBLIC SAFETY OFFICERS

Sec.

- 3300. Short title.
- 3301. Definition; legislative findings and declaration.
- 3302. Political activity; membership on school board.
- 3303. Investigation and interrogations; conduct; conditions; representation; for reassignment.
- 3304. Lawful exercise of rights; insubordination; administrative appeal.
- 3305. Comments adverse to interest; entry in personnel file or' in 'other record; opportunity to read and sign instrument; refusal to sign.
- 3306. Response to adverse comment entered in personnel file time.
- 3307. Polygraph examination; right to refuse; effect.
- 3308. Financial disclosure; right to refuse; exceptions.
- 3309. Search of locker or storage space; consent; search warrant.
- 3309.5. Local public safety officers; applicability of chapter; jurisdiction; remedies.
- 3310. Procedures of public agency providing same rights or protections; application of chapter.
- 3311. Mutual aid agreements; effect of chapter upon.

Chapter 9.7 was added by Stats. 1976, c. 465, p. 1202, §1

§ 3300. Short title

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

(Added by Stats.1976, c. 465, p. 1202, § 1.)

§ 3301. Definition; legislative findings and. declaration

For purposes of this chapter, the term public safety officer means all peace officers specked in actions 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.36, except subdivision :), 830.36, 830.37, 830.38, 830.4, and 830.6 of the Penal Code.

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

Amended by Stats.1982, c. 944, p 3430, § 1; Stats.1983, c. 964, § 1; eff. Sept. 21, 1983; Stats.1989, e.66, § 6; Stats.1990, c..676 (A.B.389), § 1.)

§ 3302. Political activity; membership on school board

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

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

(Added by Stats.1976, c. 465, p. 1202, § 1. Amended by Stats.1978, c. 1173)

§ 3303. Investigations and interrogations; conduct; conditions; representation; reassignment

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

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

(b) The public safety officer under investigation shall be informed prior to such interrogation of the rank, name and command of the officer in charge of the interrogation, the interrogating Officers, and all other persons to be present during the interrogation. All questions directed to the public safety officer under interrogation shall be asked by and through no more than two interrogators at one time.

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

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

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

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

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

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

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

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

(Added by Stats. 1976, c. 465, p. 1202, § 1. Amended by Stats. 1978, c. 775, § 1.)

§ 3304. Lawful exercise of rights; insubordination; administrative appeal

(a) No public safety officer shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights granted under this chapter, or the exercise of any rights under any existing administrative grievance procedure.

Nothing in this section shall preclude a head of an agency from ordering a public safety officer to cooperate with other agencies involved in criminal investigations. If an officer fails to comply 'With such an order, the agency may officially charge him with insubordination.

(b) No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal.
(Added by Stats. 1976, c. 465, p. 1204, § 1)

§ 3305. Comments adverse to interest; entry in personnel file or in other record; opportunity to read and sign instrument; refusal to sign

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

(Added by Stats. 1976, c. 465, p. 1204, § 1.)

§ 3306. Response to adverse comment entered in personnel file; time

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

(Added by Stats. 1976, c. 465, p. 1204 § 1.)

s 3347. Polygraph examination; right to refuse; effect

No public safety officer shall be compelled to submit to a polygraph examination against his will. No disciplinary action or other recrimination shall be taken against a public safety officer refusing to submit to a polygraph examination, nor shall any comment be entered anywhere in the investigator's notes or anywhere else that the public safety officer refused to take a polygraph examination, nor shall any testimony or evidence be admissible at a subsequent hearing, trial, or proceeding, judicial or administrative, to the effect that the public safety officer refused to take a polygraph examination.

(Added by Stats. 1976, c. 465, p. 1205, § 1.)

§ 3308. Financial disclosure; right to refuse; exceptions

No public safety officer shall be required or requested for purposes of job assignment or other personnel action to disclose any item of his property, income, assets, source of income, debts or personal or domestic expenditures (including those of any member of his family or household) unless such information is obtained or required under state law or proper legal procedure, tends to indicate a conflict of interest with respect to the performance of his official duties, or is necessary for the employing agency to ascertain the desirability of assigning the public safety officer to a specialized unit in which there is a strong possibility that bribes or other improper inducements may be offered.

(Added by Stats. 1976, c. 465, p. 1205, § 1.)

§ 3309. Search of locker or storage space; consent; search warrant

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

(Added by Stats. 1976, c. 465, p. 1205, § 1.)

§ 3309.5 GOVERNMENT CODE

§ 3309.6. Public safety officers; applicability of chapter; violations; jurisdiction; remedies

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

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

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

(Amended by Stats.1980, c. 1367, p. 4961, § 1.)

§ 3310. Procedures of public agency providing same rights or protections; application of chapter

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

(Added by Stats.1976, ·c. 465, p. 1205, § 1.)

§ 3311. Mutual aid agreements; effect of chapter upon

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

(Added by Stats.1976, c. 465, p. 1202, § 1. Amended by Stats.1977, c. 579, p.1853, §58.)

ATTACHMENT D

ATTACHMENT D

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

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

Also present during the interview is (name of civil investigator), an investigator for the (name of city) City Attorney's Office representing the (name of city) and its employees in anticipation of civil litigation.

He/she will be observing but not asking questions during the interview.

His/her presence should not be construed as an order to answer questions and no punitive administrative action will be taken against you if you choose not to answer my questions.

If you don't feel comfortable with his/her presence, he/she will step out of the room.