

CHAPTER 1
INTRODUCTION AND NOTIFICATION

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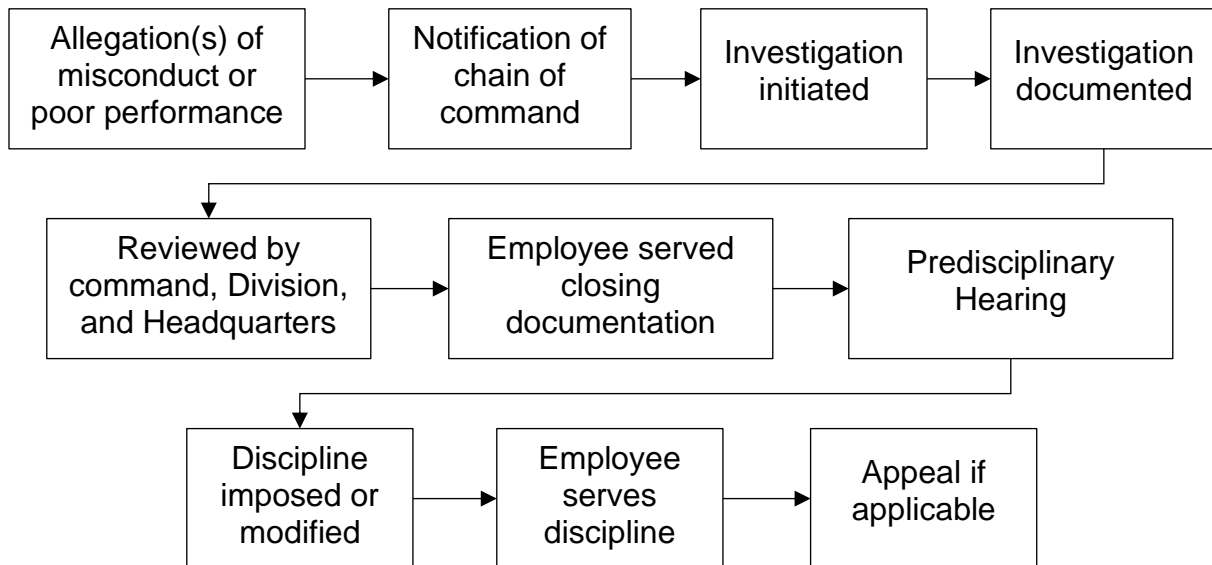
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CHAPTER 1

INTRODUCTION AND NOTIFICATION

1. **PURPOSE.** This manual establishes policy and provides departmental supervisors and managers with clear guidelines for conducting, documenting, and processing internal investigations, whether criminal or administrative.
2. **DEPARTMENTAL PHILOSOPHY.** It is the policy of this Department to fully investigate alleged misconduct. Investigations of allegations shall be done thoroughly, objectively, and in a timely manner. Investigations shall be conducted in a manner which will ensure all applicable protections are afforded to departmental employees. As such, all employees shall be treated professionally, with dignity and respect, and in accordance with departmental, organizational, and professional values.
3. **OVERVIEW.** All instances of alleged misconduct by departmental employees shall be investigated and, when appropriate, adverse action or rejection during probation initiated.

Internal Investigation Process Overview



4. LEGAL AUTHORITY.

a. Government Code Sections 19570–19593. Contains California law regarding discipline of represented state employees and managerial employees. Government Code (GC) Section 19173 provides the authority to reject a probationary employee for reasons relating to the probationer's qualifications, the good of the service, or failure to demonstrate merit, efficiency, fitness, and moral responsibility.

b. Penal Code Sections 13510–13519.15. Codifies standards for accreditation and certification of peace officers through the Commission on Peace Officer Standards and Training (POST) for law enforcement personnel throughout the State.

(1) Penal Code (PC) Section 13510.8 and PC Section 13510.9 specify notification requirements for law enforcement agencies to be made to POST regarding allegations of serious misconduct and provides regulations and criteria for the revocation and/or decertification of a peace officer's POST certificate.

c. Collective Bargaining Agreements. Contain the terms and conditions of employment for represented employees. If an employee is subject to the terms of a collective bargaining agreement (CBA), it shall always be reviewed. If the CBA has different processes, the process identified in the CBA is controlling. These and other laws and rules of the California Department of Human Resources (CalHR) and the State Personnel Board will be addressed in the relevant sections of this manual.

d. Commissioner. Except where otherwise indicated, the authority to take adverse action or initiate a rejection during probation is vested with the appointing power, the Commissioner. As specified statutes allow, the Commissioner may designate an authorized representative.

e. Lawful Orders. Employees must promptly obey any lawful orders or directives from a supervisor, manager, or officer-in-charge (OIC). This includes orders or directives from a superior which are conveyed by an employee of the same or lesser rank. If an employee receives a conflicting order or directive, the employee must respectfully call the conflict to the attention of the supervisor giving the last order. If the person giving the last order does not change or rescind it, the employee must obey it, and is not responsible for disobeying the first order. Any employee who disobeys or disregards a lawful order or directive (verbal or written) given by a supervisor, manager, or OIC may be subject to disciplinary action.

(1) Employees shall never obey orders they know, or reasonably should have known, would require them to commit reasonably apparent illegal acts. Employees in doubt as to the legality of an order shall request clarification from

the issuer. After clarification is received, if the employee still believes the order is unlawful, the employee shall seek direction and/or guidance through their chain of command.

5. RIGHTS OF DEPARTMENTAL PERSONNEL.

a. Public Safety Officers Procedural Bill of Rights Act. The Public Safety Officers Procedural Bill of Rights Act (POBR) is specified in California GC, Section 3300 et seq.

(1) By law, POBR applies to all probationary and permanent departmental personnel who are peace officers. By policy, the Department has extended POBR rights to all other employees except for cadets.

(2) Managers and supervisors shall ensure all administrative investigations are conducted in compliance with the provisions of POBR and protect the rights of employees.

b. Commanders should require all involved supervisory and managerial staff to review Chapter 11, Public Safety Officers Procedural Bill of Rights Act, of this manual as part of the initial steps of an administrative investigation.

6. NOTIFICATIONS.

a. Discovery of Alleged Misconduct. When a departmental supervisor or manager is notified or discovers alleged misconduct on the part of an employee, notification to the next level in the chain of command shall be made as soon as it is practical. If serious misconduct is alleged, the supervisor or manager shall make immediate notification to the next level in the chain of command. Failure to make timely notification may result in disciplinary action.

b. Division Notification. Upon the commander's knowledge of alleged employee misconduct, which is either serious in nature, or is likely to lead to an internal investigation, the commander shall make notification to their Division Chief. With Division Chief concurrence, an internal investigation shall be initiated, and an investigation control number assigned. This "Division Aware Date" will initiate the one-year timeframe pursuant to GC Section 3304.

(1) Within three business days of the initiation of an internal investigation, Division shall make notification to the appropriate Assistant Commissioner and the Office of Internal Affairs (OIA).

(2) Notification shall be made utilizing the CHP 7G, Notice of Internal Investigation, via email to the appropriate Assistant Commissioner and to OIA, at OIA_Notification@chp.ca.gov. See Annex A for a sample of the CHP 7G.

c. Notification to the Commission on Peace Officer Standards and Training. Pursuant to PC Section 13510.9, the Department shall make notification to POST within ten days of the following:

- (1) The termination or separation from employment of any peace officer.
- (2) Any complaint, charge, or allegation of serious misconduct against a peace officer, as defined in PC Section 13510.8.
- (3) The final disposition of any investigation that determined a peace officer engaged in conduct that could render a peace officer subject to suspension or revocation of certification.
- (4) Any civil judgement or court finding against a peace officer based on conduct, or settlement of a civil claim against a peace officer or an agency, based on allegations of officer conduct that could render a peace officer subject to suspension or revocation of certification.

The OIA will provide notification to POST of the events related to the internal investigation process specified in PC Section 13510.9.

d. Serious Misconduct. Penal Code Section 13510.8 statutorily defines serious misconduct to include all of the following:

- (1) Dishonesty. Penal Code Section 13510.8 (b)(1) defines “Dishonesty” as relating to the reporting, investigation, or prosecution of a crime, or relating to the reporting of, or investigation of misconduct by, a peace officer or custodial officer, including, but not limited to, false statements, intentionally filing false reports, tampering with, falsifying, destroying, or concealing evidence, perjury, and tampering with data recorded by a body-worn camera or other recording device for purposes of concealing misconduct.
- (2) Abuse of Power. Penal Code Section 13510.8 (b)(2) defines “Abuse of Power” as including, but not limited to, intimidating witnesses, knowingly obtaining a false confession, and knowingly making a false arrest.
- (3) Physical Abuse. Penal Code Section 13510.8 (b)(3) defines “Physical Abuse” as including, but not limited to, the excessive or unreasonable use of force.

(4) Sexual Assault. As described in subdivision (b) of PC Section 832.7, “Sexual Assault” is the commission or attempted initiation of a sexual act with a member of the public by means of force, threat, coercion, extortion, offer of leniency or other official favor, or under the color of authority. For purposes of this definition, the propositioning for or commission of any sexual act while on duty is considered a sexual assault.

(a) Penal Code Section 832.7 (b)(1)(B)(iii) defines a “member of the public” as any person not employed by the officer’s employing agency and includes any participant in a cadet, explorer, or other youth program affiliated with the agency.

(5) Demonstrating Bias. Penal Code Section 13510.8 (b)(5) defines “Demonstrating Bias” when a peace officer, on the basis of a person’s race, national origin, religion, gender identity or expression, housing status, sexual orientation, mental or physical disability, or other protected status, violates law or department policy, or is inconsistent when carrying out their duties in a fair and unbiased manner.

(6) Acts that Violate the Law. Penal Code Section 13510.8 (b)(6) defines “Acts that Violate the Law” as sufficiently egregious or repeated as to be inconsistent with a peace officer’s obligation to uphold the law or respect the rights of members of the public, as determined by the commission.

(7) Participation in a Law Enforcement Gang. Penal Code Section 13510.8 (b)(7) defines a “Law Enforcement Gang” as a group of peace officers within a law enforcement agency who may identify themselves by a name and may be associated with an identifying symbol, including, but not limited to, matching tattoos, and who engage in a pattern of on-duty behavior that intentionally violates the law or fundamental principles of professional policing, including, but not limited to, excluding, harassing, or discriminating against any individual based on a protected category under federal or state antidiscrimination laws, engaging in or promoting conduct that violates the rights of other employees or members of the public, violating agency policy, the persistent practice of unlawful detention or use of excessive force in circumstances where it is known to be unjustified, falsifying police reports, fabricating or destroying evidence, targeting persons for enforcement based solely on protected characteristics of those persons, theft, unauthorized use of alcohol or drugs on duty, unlawful or unauthorized protection of other members from disciplinary actions, and retaliation against other officers who threaten or interfere with the activities of the group.

(8) Failure to Cooperate. Penal Code Section 13510.8 (b)(8) defines “Failure to Cooperate” as failure to cooperate with an investigation into potential police

misconduct, including an investigation conducted pursuant to the Commission for POST regarding potential accreditation decertification.

(9) Failure to Intercede. Penal Code Section 13510.8 (b)(9) defines “Failure to Intercede” when a peace officer is present and observes another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject.

7. THE OFFICE OF INTERNAL AFFAIRS.

a. Overview. The OIA, which reports directly to the Office of the Commissioner, is the Department’s primary resource for guidance and assistance with the internal investigation process.

b. Functions. The OIA fulfills a wide variety of functions related to the overall internal investigation process:

- (1) Analyze submitted investigations for thoroughness and legal sufficiency.
- (2) Interpret policy and laws related to internal investigations.
- (3) Coordinate various aspects of the internal investigations process.
- (4) Provide guidance and assistance to departmental commands with the preparation of internal investigations.
- (5) Prepare notices of adverse action and rejection during probation.
- (6) With the approval of the Deputy Commissioner, conduct complex and sensitive internal investigations and provide investigative assistance to Areas and Divisions.
- (7) With the approval of the Deputy Commissioner, conduct outside agency internal investigations.
- (8) Provide training for OIA-related topics.

ANNEX A

SAMPLE CHP 7G, NOTICE OF INTERNAL INVESTIGATION

STATE OF CALIFORNIA DEPARTMENT OF CALIFORNIA HIGHWAY PATROL			
NOTICE OF INTERNAL INVESTIGATION			
CHP 7G (New 01-23) OPI 031			
DIVISION	INCIDENT DATE (OR RANGE)	DIVISION AWARE DATE	CONTROL NUMBER <small>Division Code Year Seq. No.</small>
<input type="text"/>	<input type="text"/>	<input type="text"/>	I- <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>
EMPLOYEE'S NAME (LAST, FIRST, MI.)		I.D. NUMBER	RANK / CLASSIFICATION
<input type="text"/>		<input type="text"/>	<input type="text"/>
LOCATION CODE	AREA		
<input type="text"/>	<input type="text"/>		
Summary of alleged misconduct:			
<input type="text"/>			
<input type="checkbox"/> Add page 2			
SERIOUS MISCONDUCT ALLEGATIONS			
<p>Penal Code § 13510.8 requires notification to The Commission on Peace Officer Standards and Training (POST) within ten (10) days of the Division aware date if there is an allegation of any of the following serious misconduct.</p>			
<p>ALLEGATIONS OF (Check all that apply): <input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> DISHONESTY <input type="checkbox"/></p> <p> <input type="checkbox"/> ABUSE OF POWER <input type="checkbox"/> <input type="checkbox"/> PHYSICAL ABUSE <input type="checkbox"/> <input type="checkbox"/> SEXUAL ASSAULT <input type="checkbox"/> <input type="checkbox"/> DEMONSTRATING BIAS <input type="checkbox"/> <input type="checkbox"/> LAW ENFORCEMENT GANG <input type="checkbox"/> <input type="checkbox"/> VIOLATIONS OF LAW <input type="checkbox"/> <input type="checkbox"/> FAILURE TO COOPERATE <input type="checkbox"/> <input type="checkbox"/> FAILURE TO INTERCEDE <input type="checkbox"/> </p> <p><i>*See HPM 10.2, Internal Investigations Manual, Chapter 2, Terms and Definitions, for complete definitions and examples.</i></p>			
REJECTION DURING PROBATION			
<p>To allow adequate time for service, RDP investigation due dates shall be coordinated with the Office of Internal Affairs immediately upon initiation of the RDP. <input type="checkbox"/> Dept. Initiated RDP <input type="checkbox"/> Self-Initiated RDP</p>			
PROBATION START DATE	PROBATION END DATE	DUE TO OIA	
<input type="text"/>	<input type="text"/>	<input type="text"/>	
DUTY STATUS / INVESTIGATOR(S)			
DUTY STATUS	ASSIGNED INVESTIGATOR(S)	DIRECT QUESTIONS TO:	
<input type="text"/>	<input type="text"/>	<input type="text"/>	
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