

CHAPTER 2
COMPLAINT TERMINOLOGY
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CHAPTER 2

COMPLAINT TERMINOLOGY

1. ALLEGATION CATEGORIES. All allegations of employee misconduct are classified as either Category I or Category II. Allegation categories are for statistical and reportability purposes only. The commander of the Area or Section where the complaint originated shall decide the overall classification of each complaint, based upon the most serious allegation made by a civilian during any stage of the investigation and the overall circumstances of the complaint.

a. Category I. Category I shall include any allegation(s) of “Serious Misconduct” as defined by Title 11, Section 1205 of the California Code of Regulations (CCR). “Serious Misconduct” includes: dishonesty, abuse of power, physical abuse, sexual assault, demonstrating bias, acts that violate the law, participation in a law enforcement gang, failure to cooperate with an investigation into potential misconduct, and failure to intercede in an excessive use of force.

b. Category II. Category II allegations involve verbal and/or nonverbal employee misconduct, and all other violations of policy or law not included in Category I.

c. Other Grievances. Other Grievances are complaints brought to the attention of the Department, which have their own developed procedures for resolution. These grievances shall not be handled as civilian complaints and **should not** be entered onto a CHP 240, Complaint Inquiry/Investigation. The procedure for handling Other Grievances will be discussed in Chapter 3, Complaint Acceptance, of this manual. Other Grievances include:

- (1) Allied agency complaints.
- (2) Crash investigation complaints.
- (3) Complaints from departmental personnel.
- (4) Off-duty conduct complaints.
- (5) Traffic complaints.
- (6) Vehicle storage complaints.

2. SERIOUS MISCONDUCT. Sections 13510 through 13519.15 of the California Penal Code (PC) 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. The POST Commission shall adopt by regulation a definition of “Serious Misconduct” that shall serve as the criteria for ineligibility for, or revocation of, certification. Specified in Section 13510.8 (b) PC are nine categories of “Serious Misconduct” defined by the legislature that require notification to the POST Commission for possible revocation of a peace officer’s POST certification. The POST Commission may add more definitions to what constitutes “Serious Misconduct.” The current nine categories, defined by the legislature are:

- a. Dishonesty. Section 13510.8 (b)(1) PC 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.
- b. Abuse of Power. Section 13510.8 (b)(2) PC defines “Abuse of Power” as including, but not limited to, intimidating witnesses, knowingly obtaining a false confession, and knowingly making a false arrest.
- c. Physical Abuse. Section 13510.8 (b)(3) PC defines “Physical Abuse” as including, but not limited to, the excessive or unreasonable use of force.
- d. Sexual Assault. Section 13510.8 (b)(4) PC defines “Sexual Assault” as 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.
 - (1) Section 832.7 (b)(B)(iii) PC 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.
- e. Demonstrating Bias. Section 13510.8 (b)(5) PC 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.
- f. Acts that Violate the Law. Section 13510.8 (b)(6) PC 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 POST.

g. Participation in a Law Enforcement Gang. Section 13510.8 (b)(7) PC 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.

h. Failure to Cooperate. Section 13510.8 (b)(8) PC defines “Failure to Cooperate” as failure to cooperate with an investigation into potential police misconduct, including an investigation conducted pursuant to POST regarding potential accreditation decertification.

i. Failure to Intercede. Section 13510.8 (b)(9) PC 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.

3. FINDINGS. A finding is a conclusion supported by a preponderance of all necessary evidence adequate to lead a reasonable and prudent person to reach the same conclusion. Each complaint allegation will have one of four findings:

a. Sustained. The investigation disclosed a preponderance of evidence to prove the allegation in the complaint occurred and was a violation of the law or departmental policy. This includes acts or omissions that were unintentional or made in error.

b. Not Sustained. The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation in the complaint; includes undetermined allegations.

c. Exonerated. The investigation clearly established by a preponderance of evidence the actions or omissions of the employee that formed the basis for the complaint are not a violation of law or policy. If an employee acted within policy or

the allegation is specific to departmental policy, the allegation would have a finding of exonerated.

d. Unfounded. The investigation determined the allegation is not true, and the alleged misconduct did not occur; includes frivolous and rescinded complaints without merit.

4. DEFINITIONS.

a. Allegation. A claim, assertion, or accusation of an act or omission that has not yet been proven to be factual.

b. Allied Agency Complaint. A grievance made to this Department concerning the policies, procedures, or employee conduct of an allied agency.

c. Anonymous Complaint. Any complaint wherein the complainant withholds their identity.

d. Closing Correspondence. A letter sent to a complainant and/or legislator upon the conclusion of an investigation notifying them of the findings.

e. Complainant. One who files a complaint.

f. Crash Investigation Complaint. A grievance regarding the conclusions or fault determination of a crash investigation.

g. Frivolous Complaint. A complaint totally and completely without merit or for the sole purpose of harassing an employee. This includes complaints which are questionable or irrational.

h. Information File. A reference file maintained by the Internal Affairs Section of complainants who have demonstrated a propensity for filing numerous false or frivolous complaints. The file is intended to assist commanders in identifying potentially frivolous complaints.

i. Initial Correspondence. Written or electronic acknowledgement the Department has received a complainant's allegations of potential employee misconduct.

j. Interim Correspondence. Any correspondence deemed necessary in between Initial and Closing Correspondence. The content of interim correspondence will vary but may include receipt and assignment of an investigator at the appropriate command, or a notice to the complainant or other concerned party that the investigation is ongoing prior to its resolution.

- k. Legislative Complaint. A complaint which originates from a legislator's office or from the Office of the Governor, usually on behalf of a constituent.
- l. Off-duty Conduct Complaint. A grievance regarding the off-duty conduct of a departmental employee.
- m. Preponderance of Evidence. Evidence of greater weight or more convincing than the evidence offered in opposition. It is not determined solely by the number of witnesses, but by the significance of all evidence and the totality of circumstances (more likely than not that it happened, greater than 50%).
- n. Rescinded Complaint. A complaint in which the complainant, after having initiated the complaint process, specifically requests to withdraw the allegations.
- o. Third-Party Complaint. A complaint brought by any person or group, who was not a party to an alleged act of misconduct or neglect of duty, but who reports such misconduct to this Department on behalf of another. This includes complaints by non-involved relatives, parents of children over the age of 18 years, and attorneys acting on behalf of a client.
- p. Traffic Complaint. A grievance regarding a specific traffic condition, usually due to a perceived lack of enforcement.
- q. Vehicle Storage/Impound Complaint. A grievance involving the validity of a vehicle storage or vehicle impound and is not related to employee misconduct.

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