

**CHAPTER 1**  
**RISK MANAGEMENT RESPONSE PROTOCOL**  
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## CHAPTER 1

### RISK MANAGEMENT RESPONSE PROTOCOL

1. INTRODUCTION. As a law enforcement agency and while acting in the capacity of a large business, California Highway Patrol (CHP) employees encounter incidents throughout the state which could result in personal injury and/or property damage resulting in civil litigation. The Office of Risk Management (ORM) was established to enhance the protection of CHP employees and the Department from risks inherent to the law enforcement profession.

2. POLICY.

a. This chapter establishes a formalized, statewide risk management program within the CHP. Risk management is defined as an activity that involves the evaluation or comparison of risks and the development, selection, and implementation of control measures that change, reduce, or eliminate the probability or the consequences of a harmful action.

b. The ORM has compiled a list of Threshold Incidents (outlined in paragraph 4.) which have an increased probability of resulting in the Department or the State of California becoming a defendant in a civil lawsuit. The ORM has developed protocol to respond to such incidents in order to maximize employee safety while minimizing the Department's financial liability and exposure to costly litigation, thus improving departmental practices and providing consideration for the employee's well-being.

c. Division commanders will establish Standard Operating Procedures for Risk Management Response Protocol for situations unique to their individual commands. These may include geographical or logistical challenges which could impact response. Division commanders shall ensure personnel under their command are familiar with, and follow, the policies and procedures contained in this chapter.

d. Notification and reporting requirements set forth by this chapter are supplemental to, and do not replace or supersede, existing notification and reporting requirements contained in other departmental policies or statutory regulations.

### 3. GENERAL.

a. The ORM is a proactive command created for the purpose of preventing and/or mitigating risks to the Department. The ORM reports to the Deputy Commissioner and provides support services to designated and trained Risk Management Administrators (RMA) for risk-related incidents as needed. Once an incident reaches the litigation stage, the Office of Primary Interest is the Office of Legal Affairs (OLA). The OLA will coordinate litigation management with the affected Divisions.

b. The ORM, Risk Management Unit, reports to a captain (commander) and is comprised of a lieutenant, an Analysis Unit, and a Claims Support Unit.

#### c. Office of Risk Management Responsibilities.

(1) Providing risk assessment of specific events as directed by Executive Management.

(2) Providing risk assessment of specific programs and/or commands as directed by Executive Management.

(3) Providing comprehensive training specific to the handling of risk management incidents.

(4) Providing support services to the designated and trained risk managers assigned to field operations in evaluating situations of potential liability.

(5) Providing research and assistance in preparing a litigation management package.

(6) Acting as a liaison with the Attorney General's office on risk issues.

(7) Coordinating with the Deputy Commissioner.

(8) Coordinating, through Personnel and Training Division (PTD), the archiving of current policy for line-of-duty deaths. A copy of policy in effect at the time of the Threshold Incident shall be saved to data storage media (e.g., compact disc) and forwarded to ORM for retention.

(9) Preparing a risk management status report to provide Executive Management with trend analyses regarding types of claims filed, deficiencies, and lessons learned.

(10) Providing information to Executive Management relative to risk management issues.

(11) Proactive monitoring of nondepartmental sources (media, Internet, law reviews, etc.) for potential departmental risk issues.

(12) Notifying the Attorney General's office regarding in-custody deaths, per California Government Code (GC) Section 12525.

(13) Notifying the Attorney General's office regarding use of force incidents, per California GC Section 12525.2.

(14) Assist PTD with the securement and retention of personnel files after line-of-duty deaths.

d. Office of Legal Affairs Responsibilities.

(1) Providing legal analysis, advice, and representation on sensitive and complex legal matters.

(2) Responding directly to the location of complex and difficult Threshold Incidents, in which the Department may face liability. The OLA will ensure procedures necessary to provide legal advice relative to incident risk are followed and that the interests of the Department are properly addressed.

NOTE: The OLA will not serve as the legal representative for specific involved employees at a Threshold Incident. Such representation will be coordinated through OLA as specified in Highway Patrol Manual (HPM) 11.1, Administrative Procedures Manual, Chapter 9, Civil Actions, Defense of Employees, Small Claims Actions, Constitutionalist Actions, Indemnification of Citizens, Victims of Violent Crimes.

e. Division Commander Responsibilities. The Division commander or designated alternate is responsible for the overall management of the Risk Management Program within their area of responsibility. This involves the designation of RMAs at Threshold Incidents, response protocols, case management/tracking, and coordination with the appropriate Assistant Commissioner and adjacent Divisions regarding inter-Divisional events.

f. Risk Management Administrator. The role of the RMA is to provide oversight, to include planning, organizing, and directing departmental resources, to help prevent and/or mitigate the Department's civil liability at incidents and events within their Division. Division RMAs shall be assigned at the rank of assistant chief. The RMA may designate a captain or lieutenant to assist with on-scene responsibilities.

NOTE: If an event or series of events are determined to have an impact statewide, Executive Management may designate an RMA to coordinate a risk assessment with all affected Divisions.

g. Risk Management Administrator Responsibilities. The primary responsibility of the RMA is to determine the appropriate response to Threshold Incidents and manage the event from a risk management perspective from the time of notification until all documentation is prepared, reviewed, and evidence is seized and secured.

(1) Upon notification of a Threshold Incident, the RMA shall:

(a) Respond to all Threshold Incidents as defined in paragraph 4.

(b) Coordinate with the involved Area incident commander and allied agency representatives.

(c) Evaluate the necessity of immediate notification of the ORM commander and/or OLA. Make such notification(s) if deemed required.

(d) Make notification through the appropriate Assistant Commissioner to ORM and OLA with an initial briefing of the incident as outlined in paragraph 6.

(e) Utilize the CHP 271, Critical Incident – Potential Civil Liability Documentation/Materials Checklist, as a guide to determine what supporting documentation should be secured.

(f) Ensure activation of the Critical Incident Investigation Team (CIIT) as outlined in HPM 100.8, Critical Incident Investigation Team Manual, Chapter 1, General.

(g) Review preliminary press releases including the CHP 288A, Report of Collision – News Release, for use by the Division/Area Public Information Officers, as well as any Communications Network messages prior to their statewide release.

(2) Postincident, the RMA shall:

(a) Coordinate with ORM to prepare a civil litigation management package. This would include ensuring the initiation, completion, and timely submission of the CHP 268, Risk Management Potential Civil Litigation Report, as described in Chapter 2, Reports of Incidents – Potential Civil Litigation, of this manual. A CHP 268 shall be completed and forwarded to ORM within seven calendar days. If a CHP 268 is not available within seven calendar days, a preliminary CHP 268, containing all information known about the incident at that time, shall be saved to the appropriate Area or Division Risk Management Reports folder.

NOTE: The absence of an approving signature will serve as the notice to ORM that the CHP 268 is a preliminary report.

(b) Ensure Division-level tracking of Threshold Incidents.

1 Establish a tracking system of case milestones and time-sensitive events (e.g., CHP 268; CHP 275, Risk Management Use of Force Report; CHP 208, Collision Prevention Report; STD. 270, Vehicle Accident Report; Multidisciplinary Accident Investigation Team [MAIT] reports/supplementals; and CIIT reports) to ensure appropriate management oversight.

2 If the event involves criminal prosecution, the RMA shall ensure the Area/section commander maintains ongoing contact/coordination with the local district attorney from case filing to case disposition.

3 Ensure the Area/section commander properly prepares all employees for the criminal/civil litigation process (e.g., knowledge of departmental policies, current case law, full review of all reports and documentation prepared for the incident, meeting[s] with deputy district attorney or deputy attorney general).

(c) Act as the liaison with ORM and OLA on case management and coordinate specific command involvement to case conclusion.

4. THRESHOLD INCIDENTS. Threshold Incidents are defined as those incidents which have a high probability of resulting in the Department or State of California as a defendant in a civil lawsuit.

a. The following Threshold Incidents are not all-inclusive. Accordingly, sound professional judgment shall be used to determine if an incident could potentially bring about civil liability for the Department. In addition, supervisors/managers should consider whether the incident could unfavorably reflect upon or cause embarrassment to the Department or another state agency.

(1) Any incident in which a member of the Department is seriously injured or killed during the performance of their duties.

(a) For the purposes of this manual, a “serious” injury is defined as serious impairment of physical condition, including, but not limited to, the following: loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, a wound requiring extensive suturing, and serious disfigurement.

(2) Any incident involving departmental personnel which results in serious injury, hospitalization, or death to a member of the public.

(a) For the purposes of this manual, hospitalization is defined as admittance to a hospital for the ongoing observation or care of injuries sustained as a result of the Threshold Incident. Hospitalization shall not be interpreted as routine medical clearances prior to booking in a jail facility.

(3) When a member of the Department intentionally or by accident discharges a firearm at a person, whether on- or off-duty, and whether or not an individual is struck.

(4) Any sensitive or complex internal investigation when the liability appears to be that of the Department.

5. NONTHRESHOLD POTENTIAL CIVIL LIABILITY INCIDENTS. A Nonthreshold Potential Civil Liability (PCL) Incident is defined as an incident not rising to the level of a Threshold Incident, but which is deemed to potentially cause liability exposure for the Department. The following are examples of Nonthreshold PCL Incidents:

a. Any incident involving a patrol vehicle collision which results in an “other visible” and/or “complaint-of-pain” injury to a party or parties, other than a member of the Department. For the purposes of this manual, the following definitions apply:

(1) An other visible injury is a visible injury that does not meet the definition of a serious injury as previously defined in this chapter. Other visible injuries may include, but are not limited to: minor lacerations and abrasions, minor bruising or other discoloration, and swelling such as a lump on the head.

(2) A complaint-of-pain injury is any claimed injury that does not meet the definition of a serious or other visible injury as previously defined in this chapter. Complaint-of-pain injuries may include, but are not limited to: nausea, limping, confusion/incoherency (unless attributed to intoxication, age, illness, or mental infirmities), internal injuries, other nonvisible injuries, and fraudulent claims of injury.

b. Any incident involving the use of force by a member of the Department which results in an other visible and/or complaint-of-pain injury to a suspect or bystander.

c. Any incident involving an other visible and/or complaint-of-pain injury from the use of handcuffs (indentations and/or redness only do not require a CHP 268).

- d. When high-risk or felony stop procedures are used and the suspect(s) is/are later found to be an innocent party.
- e. An incident where a civilian slips and falls in the front lobby of an Area office and sustains an injury.
- f. When an innocent party's vehicle runs over a spike strip.
- g. Any incident when there is damage caused by the push-bumper removal of a vehicle or equipment from the roadway.

NOTE: The foregoing examples of Nonthreshold PCL Incidents are not all-inclusive. Accordingly, sound professional judgment will dictate the need for documentation of employee actions during incidents which could cause civil liability for the Department. When any doubt exists as to the necessity for a report, a CHP 268 should be completed.

6. NOTIFICATIONS. The policies and procedures contained in General Order 100.80, Notification and Report of Emergencies and Unusual Occurrences, shall be followed. In conjunction with the notification of the appropriate Assistant Commissioner, ORM shall be notified as follows:

- a. Threshold Incidents require an immediate notification to ORM via the Emergency Notification and Tactical Alert Center (ENTAC). The ORM will provide ENTAC with a 24-hour call out list of personnel available for notification.
- b. Nonthreshold PCL Incidents require the appropriate preliminary or completed CHP 268 transmitted to ORM within seven calendar days; however, ENTAC notification is not required.

7. PROCEDURES FOR REQUESTING ON-SCENE ASSISTANCE FROM THE OFFICE OF RISK MANAGEMENT. In the event of a particularly complex and difficult Threshold Incident, the RMA may request assistance from ORM. Requests for assistance made outside of business hours shall be made through ENTAC. Based on availability, ORM may respond directly to the location to provide technical support and assist with procedures necessary to ensure the interests of the Department are properly addressed.

8. OPERATIONAL RESPONSIBILITY. While assisting with the investigation, members of ORM will coordinate activities with the Division RMA.

9. REPORTING REQUIREMENTS.

- a. All reports generated from the incident shall be completed in a timely manner. It is the responsibility of the RMA to ensure all incident documentation is complete, consistent, and within policy.
- b. Reports shall not be delayed pending the completion of an investigation (e.g., MAIT report or CIIT report).

10. MEDIA RELATIONS. Media relations specific to a Threshold Incident should be coordinated through the RMA. The RMA may designate a spokesperson to manage media relations. The RMA shall ensure that any information released to the public concerning the incident is done in a manner consistent with departmental policy.

11. RELEASE OF INFORMATION.

- a. All requests for release of information involving the incident (e.g., requests under the Public Records Act) shall be coordinated with ORM.
- b. All requests for release of information involving the incident (e.g., discovery of peace officers' personnel records pursuant to Evidence Code Section 1045, commonly referred to as Pitchess Motions) shall be coordinated with OLA.

12. RISK MANAGEMENT ADMINISTRATOR TRAINING. The ORM is responsible for organizing and facilitating training and meetings as needed. The purpose of these meetings will be to discuss lessons learned, to resolve issues, and to develop/prioritize strategic risk management objectives.