

CHAPTER 2
REPORTS OF INCIDENTS—POTENTIAL CIVIL LIABILITY

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CHAPTER 2

REPORTS OF INCIDENTS—POTENTIAL CIVIL LIABILITY

1. REPORTING INCIDENTS OF POTENTIAL CIVIL LIABILITY.

a. Background. To prepare the Department for a claim/potential claim, whether received through the Government Claims Program (GCP), in response to, or in anticipation of a submitted form CHP 287, Claims of \$1,000 or Less; commands shall complete a CHP 216, Arrest – Investigation Report, and select the “GC 910” box for those incidents requiring documentation (refer to Chapter 6 of this manual). The Employee Health and Wellness Section (EHWS), Risk Management Unit (RMU), is the Office of Primary Interest for these reports.

b. Sergeant/Supervisor Responsibilities. A supervisor with direct knowledge of the incident shall complete a CHP 216 as soon as practical. Collection of evidence such as photographs should be considered before leaving a scene (e.g., when gathering evidence for an accidental spike strip, photographing every tire and the involved vehicle from all sides will assist in the claim). A field supervisor should carry the necessary claims forms with them to expedite the claim process.

c. Government Code 910 Definition. The Government Claims Act (Sections 810-999.6 of the Government Code [GC]) sets forth guidelines for filing a claim against a government entity. This law applies to public entities such as state, county, and local government agencies or departments, as well as to government employees. With a few exceptions, an individual must first file a claim before filing a lawsuit against the Department. Section 910 GC sets forth the essential contents of a claim. This includes the following:

- (1) The names and addresses of the claimant and where notices are to be sent.
- (2) A statement of the date, place, and other circumstances of the occurrence or transaction.
- (3) A description of the indebtedness, obligation, injury, damage, or loss incurred, as far as they are known when the claim is presented.
- (4) The name of the public employee who caused the injury, if known.
- (5) The amount claimed if under \$10,000, including the estimated amount of injury, damage, or loss. If over \$10,000, no dollar amount shall be included in the claim, and it shall indicate whether the claim would be a limited civil case.

NOTE: Commands should review the contents of a CHP 287 submitted to the Area by a claimant to ensure GC 910 requirements are met, prior to sending to the EHWS.

d. CHP 216, Arrest – Investigation Report, Documentation. The CHP 216 shall contain only facts surrounding the incident. No opinions or allegations of employee misconduct shall be documented on the CHP 216. For incidents involving push bumper damage where the involved employee had a duty to act in the interest of public safety and pushed the claimant's vehicle to the nearest safe location (e.g. right shoulder), this information should be included on the CHP 216. Nothing in this chapter precludes an Area from completing an incident only CHP 216 for those incidents not specifically outlined in Chapter 6 of this manual, and/or when the potential for a claim may exist. The CHP 216 incident number shall be formatted as follows: Area.Date.Time (e.g., 037.01012025.0001). This number shall be documented as the File Number.

e. CHP 287, Claims of \$1,000 or Less. If an individual claims to have suffered a loss of \$1,000 or less, they shall be provided a CHP 287, Claims of \$1,000 or Less. The CHP is authorized under Section 935.6 GC to process and pay, when applicable, claims of \$1,000 or less against the Department. Refer to Chapter 6 of this manual for more specific information, including time frames and additional requirements.

f. DGS ORIM 006, Claims Exceeding \$1,000. All claims exceeding \$1,000 must be filed with DGS by completing a DGS ORIM 006, Government Claim. The form may be accessed online through the DGS website. A claimant who is unable to print the claim form may contact DGS at (800) 955-0045 to receive the form by mail. Refer to Chapter 6 of this manual for more specific information, including time frames and additional requirements.

g. Role of The Employee Health and Wellness Section, Risk Management Unit.

The EHWS, RMU, is responsible for investigating all CHP 287 claims against the Department and for providing recommendations to DGS for claims exceeding \$1,000. At the conclusion of the investigation, claimants will be notified in writing of the outcome. If a CHP 287 claim is partially allowed or denied, claimants have six months from the date the notice was personally delivered or deposited in the mail to file a court action on the claim (Section 945.6 GC).

2. PRESERVATION OF EVIDENCE. Commands shall retain the CHP 216 documenting the incident for five years. All supporting materials (e.g., collision reports, photographs) regarding a claim/potential claim shall be booked into the Area evidence room and administratively retained for five years. Prior to releasing or disposing of any evidence related to these incidents, the Area shall follow departmental policy contained

in Highway Patrol Manual (HPM) 70.1, Evidence Manual, Chapter 9, Disposal of Evidence and Property.

a. Prior to releasing any evidence to an allied agency or district/city attorney's office, contact the EHWS for guidance.

b. Areas shall determine if any civil litigation is pending prior to releasing or destroying preserved materials/documents. Approval shall be obtained from the EHWS and the Office of Legal Affairs (OLA) prior to the destruction of any materials/documents from these incidents. Approval may be obtained through e-mailing the EHWS, Risk Management Unit, at RiskManagementUnit@chp.ca.gov and OLA, at OfficeOfLegalAffairs@chp.ca.gov.

3. AUDIO/VIDEO RECORDINGS. Copies of audio/video recordings (e.g., Mobile Video/Audio Recording Systems, body cameras, mobile phones) should not be mailed/transmitted to the EHWS unless a request is sent to the involved Area, regardless of the incident type. If requested, copies of the audio/video recordings can be mailed to: The Employee Health and Wellness Section, Risk Management Unit, 601 North 7th Street, Sacramento, CA 95811. The word "Confidential" shall be on the outside of the mailing envelope containing the audio/video recording.

a. The CHP 216 file number, the involved employee(s) name and ID number(s), and the name of the involved subject(s) should be included with the audio/video recording.

b. To expedite the process, documents and audio/video recordings should be uploaded and transmitted to the EHWS using Microsoft OneDrive.

4. INCIDENTS INVOLVING CIVILIANS' COMPLAINTS. When an incident leads to a civilians' complaint investigation to be conducted, it shall be conducted in accordance with HPM 10.4, Citizens' Complaint Investigations. If it is known that a civilians' complaint was filed when completing the CHP 216, it shall not be documented, nor shall it be included as part of the claims process.

5. INCIDENTS INVOLVING MISCONDUCT. Where there is an indication of employee misconduct, appropriate action shall be initiated in accordance with policy contained in HPM 10.2, Internal Investigations Manual. Should an internal investigation result, the EHWS shall be notified so the Attorney General's office can be advised of the possible conflict of interest. If it is known that adverse action will be taken when completing the CHP 216, it shall not be documented, nor shall it be included as part of the claims process.

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