

Complaint Investigations:

A Guide for Supervisors



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Los Angeles Police Department

Internal Affairs Group

Preface

Complaint Investigations: A Guide for Supervisors presents a step-by-step reference for supervisors investigating personnel complaints. While no guide will ever be exhaustive, this guide is intended to be a comprehensive resource to address the most common questions that arise during investigations.

The *Guide* will also be useful to commanding officers as a standard for evaluating the thoroughness of investigations as well as a resource for training supervisors. Indeed, the *Guide* will serve as the foundation for training given in law enforcement courses on internal discipline and investigations.

One of the most important sections in the *Guide* deals with the preliminary investigation of personnel complaints. Thorough and immediate preliminary investigations lead to definitive conclusions. The points outlined in the *Guide* provide an excellent outline for supervisors to follow and a clear standard by which commanding officers should review investigations.

CHARLIE BECK
Chief of Police

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2. [CMS step by step workflow tutorial](#)
3. [Authorization to Release Medical Information Form 05.03.00](#)
4. [California Government Code Sections 3300-3312](#)
5. [PSB Tolling Provisions](#)
6. [City Charter Section 1070](#)
7. [Investigative Strategies' Guide](#)
8. [PSB Initial Responder Checklist](#)
9. [Common Mistakes in Complaint Investigations](#)
10. [Prioritizing your Caseload](#)
11. [PSB Investigative Plan of Action](#)
12. [Financial Records Release Authorization](#)
13. [Suggestions for the Wording of Allegations](#)
14. [Guidelines for use of Interrogatories](#)
15. [E-mail text for e-mail Interrogatories](#)
16. [Interview / Interrogation Outline for Subject / Witness Officer](#)
17. [Tips on Questioning Difficult Witnesses](#)
18. [Lead-in and Advisement Form \(Department Employee\)](#)
19. [Citizen lead-in Form \(Non-Department Employee\)](#)
20. [Interview Techniques – Questioning Strategies](#)
21. [Complaint Investigation example one](#)
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24. [Special Order 15 \(2005\) – Retaliation Prohibited Acts](#)
25. [Special Order 16 \(2005\) – Policy Prohibiting Retaliation](#)
26. [Anti-Discrimination and Retaliation](#)
27. [Questions for Biased Policing Complainants](#)
28. [Questions for Biased Policing Accused Officers](#)
29. [Biased Policing Checklist](#)
30. [Biased Policing Strategies and Standards of Review](#)
31. [LDRS](#)
32. [Alternate Complaint Resolution Guide](#)
33. [Alternative Complaint Resolution Acknowledgement \(Waiver\) Form](#)
34. [Consent to Search Form](#)

35. Domestic Violence Wheel
36. Stay Away Order Exemplar
37. Confiscation of Firearms Exemplar
38. VINE Pamphlet
39. Marsy's Rights card
40. Domestic Violence Notebook Dividers
41. Training Bulletin, LAPD, Volume XXXV, Issue 13, July 2003
42. Training Bulletin, LAPD, Volume XXXIV, Issue 5, May 2007
43. Training Bulletin, LAPD, Volume XXXV, Issue 15, July 2003
44. Sexual Assault Response Team Hospitals
45. Sexual Assault Investigative Report Aid
46. Sexual Assaults – Comments / Planned Investigative Steps
47. Sexual Assault Investigation Checklist
48. Chemical Test Administrative Advisement
49. MOU No. 24
50. MOU No. 25
51. PSB Notice Dated October 31, 2011
52. Skelly Manual
53. Waiver of Attorney Client Privilege Form
54. Case Law

Abbreviations

AID	Administration Investigation Division
ACR	Alternative Complaint Resolution
BS:	Behavioral Science Services
CA	City Attorney
CA ID	California Identification
CCU	Complaint Classifications Unit
CDL	California Driver's License
CF	Complaint File Number
CID	Criminal Investigation Division
CMS	Complaint Management System
C/O	Commanding Officer
DA	District Attorney
DFAR	Daily Field Activities Report
DICVS	Digital In-Car Video System
DM	Department Manual
DMV	Department of Motor Vehicles
DOM	Detective Operations Manual
DPS	Deployment Planning System
DR	District Reporting Number
DRE	Drug Recognition Expert
FI	Field Identification Card
FID	Force Investigation Division
FLSA	Fair Labor Standards Act
FTA	Failure to Appear
FTQ	Failure to Qualify
GC	Government Code

GCI	Gas Chromatograph Intoximeter
HIPAA	Health Insurance Portability and Accountability
IAG	Internal Affairs Group
I/O	Investigating Officer
ISG	Investigative Strategies Guide
ITD	Information Technology Division
LDRS	Listen, Determine Strategy, Research, Summarize
MDC	Mobile Digital Computer
MOU	Memorandum of Understanding
OIC	Officer in Charge
ORS	Officer Representation Section
PAB	Police Administration Building
PC	Penal Code
POA	Police Officers Association
PSB	Professional Standards Bureau
PTC	Preventable Traffic Collision
RACR	Real-Time Analysis and Critical Response Division
SART	Sexual Assault Response Team
SID	Scientific Investigation Division
SOD	Special Operations Division
SSN	Social Security Number
TMU	Threat Management Unit
TTY	Teletypewriter
WIS	Workplace Investigation Section

Section 1

Administration of Discipline

Discipline

According to the Department Manual (DM), it is essential that public confidence be maintained in the ability of the Department to investigate and properly adjudicate complaints against its members. Additionally, the Department has the responsibility to seek out and discipline employees whose conduct discredits the Department or impairs its effective operation. The rights of the employee, as well as those of the public, must be balanced and preserved. Every investigation, or hearing, arising from a complaint must be conducted in an open and fair manner with the truth as its objective. The Department accepts complaints against its members and fully investigates all such complaints to the appropriate disposition (DM 1/220.05).

The Department advocates the use of positive discipline to gain employees' compliance to policies, procedures, and daily tasks. Supervisors and managers are encouraged to lead through inspiration, explanation, and encouragement. When employees fail to respond to positive discipline, they are subject to punitive actions such as an Admonishment, Official Reprimand, suspension, demotion, or removal from office. Discipline may be administered after weighing the severity of the misconduct with the employee's complaint history, experience, motives, intent, and the damage caused. Finally, the penalty must be balanced with consideration to the employee, the Department, and the public trust.

Misconduct Defined

The Department defines misconduct as:

- Commission of a criminal offense.
- Neglect of duty.
- Violation of Department policies, rules, or procedures.
- Conduct which may tend to reflect unfavorably upon the employee or the Department (DM 3/805.25).

Public Complaint Defined

The definition of a complaint includes any public complaint, anonymous or identified, regarding Department services, policy or procedure, claims for damages (which allege employee misconduct), or employee misconduct,

regardless of whether the complaint alleges misconduct as defined by DM 3/805.25 (Misconduct Defined), and any complaint of misconduct initiated by Department employees.

Exception: A complaint shall not be initiated when the sole reason consists of one or more of the following issues, unless the initial conversation with the complainant identifies attributable misconduct:

- Disputed traffic citation;
- Delay in service;
- Low-flying airship; or,
- Complaint by an inmate regarding accommodations, cell assignment, quantity/quality of food, etc.

The delayed response of a patrol unit or a detective failing to conduct a follow-up interview due to workload is not considered a complaint, but rather a delay in providing service and no Complaint Form, Form 1.28.0, is required. If the preliminary investigation discloses there was negligence rather than a delay in providing service due to workload (e.g., call lost when passed from one unit to another at change of watch), a Complaint Form shall be completed.

Complaints shall be accepted from any source: written, verbal, in person or telephonic (or teletype (TTY), by mail, facsimile transmission, or electronic means, or anonymously, at PAB, any bureau, Area station or substation, at the offices of the Board of Police Commissioners and the Office of the Inspector General, or, any other police facility accessible to the public (DM 3/801.05).

Traffic Citations

Supervisors shall conduct a preliminary investigation of the violator's complaint about the issuance of the traffic citation. If no error was identified in the issuance of the citation, the complainant should be directed to the appropriate court for resolution, and no Complaint Form is required. However, if misconduct was alleged or discovered during the interview, then a Complaint Form is required.

Vehicle Impound Complaints

Supervisors shall interview the complainant regarding the incident that resulted in the vehicle being impounded. If no other allegation(s) is made regarding the vehicle impound itself, no Complaint Form is required and the complainant may be referred to the Vehicle Impound Hearing process as delineated in Manual Section 4/266.05. If the interview discloses an allegation(s), a Complaint Form shall be initiated regarding the allegation(s) outside of the vehicle impound, and

the referral of the Complainant to the Vehicle Impound Hearing process documented on the Complaint Form (DM 3/810.05).

Guidelines for Accepting Public Complaints

Confidentiality of Personnel Investigations

Supervisors investigating employee misconduct have a legal and ethical obligation to maintain the confidentiality of the investigation. State law protects employees' personnel records and personal information. The personal information of sexual assault victims is also protected. Investigators shall only discuss aspects of investigations with persons who have a right and need to know. Moreover, when confidential information is unnecessarily released the rationale for maintaining confidentiality can be lost, making employees' personal affairs open to the public domain.

Under the Public Safety Officers Procedural Bill of Rights Act [1976], (Government Code [GC] Sections 3300 - 3311, accused public safety officers are entitled to "...any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential..." (GC Section 3303(g)). For ten years, police labor organizations debated with departments over the meaning and intent of the section: Did it require pre-interrogation discovery or post-investigation disclosure? The answer came in 1986 with a lawsuit brought by the Pasadena Police Officers' Association (POA) against the Pasadena Police Department.

The Pasadena Decision settled the debate when the court ruled that the legislature's intent was for officers to be presented with a copy of the investigation AFTER the investigation was completed. The court noted that it would be impractical for an agency to reveal what it knew about an investigation to the person under investigation prior to an interrogation. Thus, it stands today that accused employees are NOT entitled to any materials until AFTER the investigation is completed, though, they are entitled to know the nature of the investigation and to obtain copies of recordings of their prior interview and before any subsequent re-interview [GC Section 3303(c) & (g)].

The Department is required by State law to retain personnel investigations for at least five years (Penal Code [PC] Section 832.5). All peace officers' personnel records, which include personnel investigations, are also considered confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Evidence Code sections 1043 and 1045. Grand juries and District Attorneys' offices who are investigating the conduct of officers or agencies may

obtain peace officers' personnel records and personnel complaint investigations without a court order (PC Section 832.7).

The Department has established procedures that comply with State law and the courts for releasing personnel records and investigations. Generally, Legal Affairs Division processes all such requests, which must be filed in writing through the court system. Occasionally, IAG receives requests for confidential information directly. Regardless of the source, only command and staff officers of IAG have the authority to approve the release of information from IAG files.

Duty to Report Misconduct

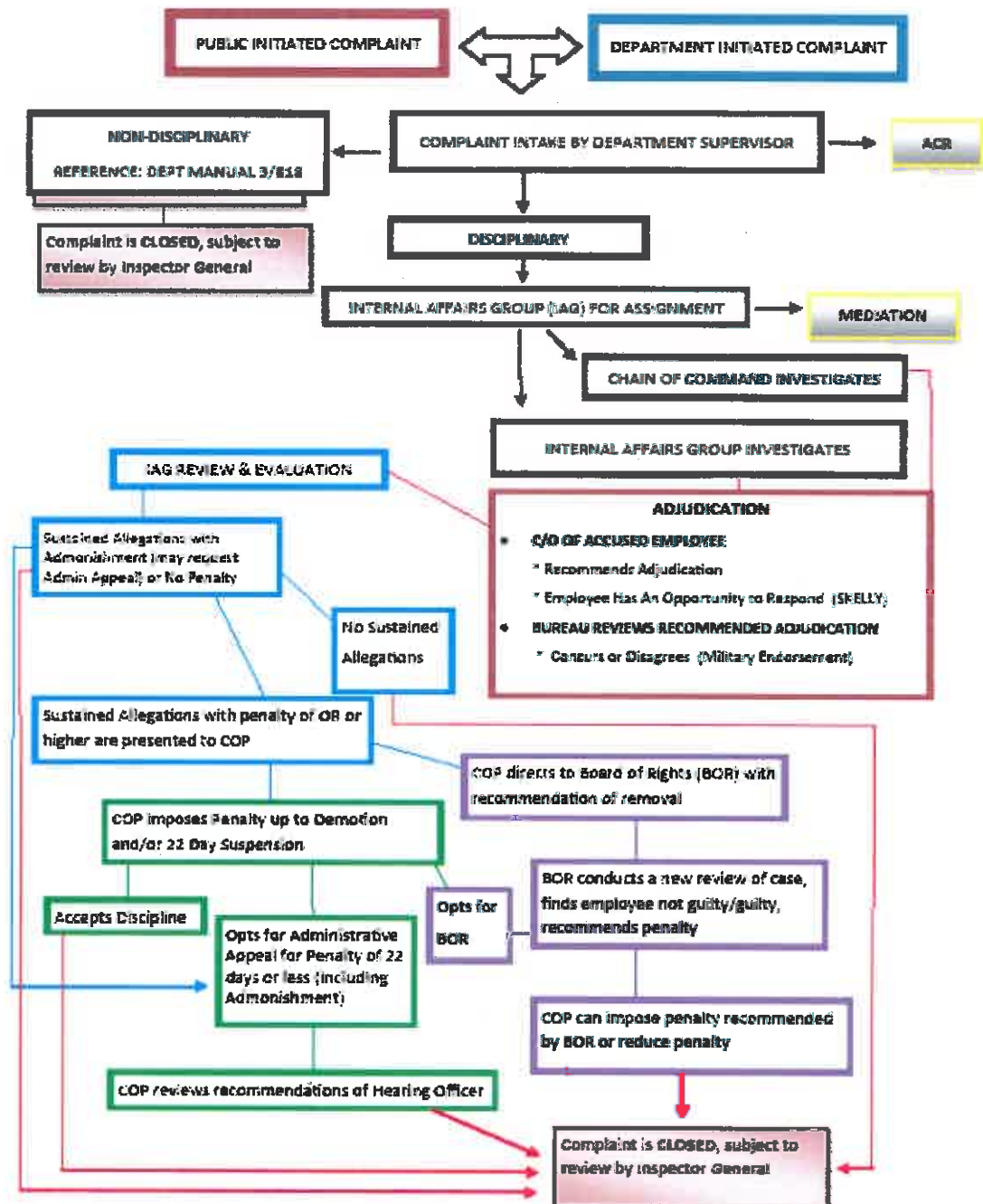
When an employee becomes aware of possible misconduct by another Department employee, the employee shall immediately report the misconduct to a supervisor and/or directly to Internal Affairs Group (IAG). This requirement applies to all employees, including supervisory personnel and managers (the rank of captain or above), who learn of possible misconduct (DM 3/813.05).

Disciplinary Process

The disciplinary process can be a lengthy and stressful time for all parties involved. It is important to completely understand the entire complaint process from the intake of the complaint form (face sheet) to the final disposition. Once a complaint of misconduct is reported to an *uninvolved supervisor*, the Department has ten days to complete the preliminary investigation and 365 days to complete the formal investigation.

Note: All personnel complaints with their preliminary investigations must be forwarded to IAG within 10 calendar days of initiating the complaint.

DISCIPLINE PROCESS OVERVIEW



Section 2

The Preliminary Investigation

Nothing is more frustrating to a supervisor than to be assigned a complaint investigation only to find that the supervisor who originally took the complaint did nothing more than informally interview the complainant. Doctors often talk about the “Golden Hour,” the critical minutes following a traumatic injury in which a patient’s best hope for survival lies. A Golden Hour also exists for investigators. It is the critical time period following an incident in which the investigator has his/her best chance for solving the case. Supervisors who are tasked with taking a public complaint, especially one which is alleged to have just occurred, should recognize the “Golden Hour” concept and conduct a thorough, and diligent preliminary investigation.

Note: Conducting a thorough preliminary investigation can make the difference between resolving a complaint (Exonerated, Unfounded, Sustained) or leaving it unresolved (Not Resolved, Insufficient Evidence to Adjudicate).

Intake

When a supervisor becomes aware of a public complaint, or a complaint of misconduct initiated by Department personnel, the supervisor shall conduct a thorough preliminary investigation.

Exception: Supervisors who find themselves the subject of alleged misconduct shall report the incident to an uninvolved supervisor who shall conduct a preliminary investigation and, if necessary:

- Complete a Complaint Form, summarizing the complaint and the complainant’s statements under the Summary portion;
- Tape-record all interviews. If not practical, supervisors shall include a written justification under the Summary portion of the Complaint Form (DM 3/816.01).

Maintaining objectivity demands that investigators keep an open mind at all times. The most outlandish allegations could be true, and seemingly credible charges could be completely false. *The investigator's role is to gather the facts.*

The “LeaDeRS” Concept

It is important to have strong leadership at all levels of the organization. One point of leadership is during the intake investigation. When conducting an intake, think Risk Management. Objectivity is key!

Think of the acronym LDRS:

- **Listen** to the complainant to determine the nature and scope of the investigation.
 - Listen to the entire story without interruptions.
 - Interruptions often result in lost information.
 - Ask open ended questions.
 - Actively listen to the story from beginning to end.
- **Determine strategy**; plan how to gather the additional information needed to resolve the allegations.
 - Refer to the strategies listed in the following sections or in the Investigative Strategies Guide (ISG) located on the IAG web site.
 - Develop additional questions and identify areas that may require additional information or clarification.
 - A sound intake interview may preclude the need for additional interviews and locks a complainant into a freshly recollected statement.
- **Research** the incident utilizing the strategies in the following sections and outlined in the Investigative Strategies Guide.
 - Ask specific questions after the complaining party responds to the questions.
 - Probe for clarifying information.
 - Question inconsistencies.
- **Summarize** the complainant’s/witnesses statements at the conclusion of the respective interviews, while recording.
 - This ensures that the statement is accurate and contains all of the allegations.

Intake Case Strategy

- Identify all parties involved; complainant, witnesses, accused, involved employees and supervisors.
 - For non-employees collect the following:
 - Name.
 - Date of Birth.
 - Address.
 - Hang outs.
 - Alternative contact information (family member, social media).
 - Email address.
 - Telephone numbers (home, cellular, work).
 - Verify identity, e.g., California Driver's License (CDL), California Identification (CA ID), Social Security Number (SSN).
 - Note the best time to be contacted.
- Collect and preserve evidence.
 - Visit the scene at the same time as the incident occurred.
 - Photograph liberally:
 - Vantage points from those involved.
 - Injuries or lack thereof.
 - Photograph equipment violations.
 - Property damage or lack thereof.
 - Scene, lighting.
 - Video recordings, including Digital In-Car Video System (DICVS) and surveillance tapes.
 - It may be necessary to seize officers' equipment such as boots, batons, clothing, or flashlights.
 - Obtain samples for testing such as blood or other bodily fluids (In most cases if not done during the time of the incident, it is too late);
 - Fingerprints.
 - Ballistic evidence.
 - Check nearby businesses and city streets for video cameras.
 - Obtain any audio/video recordings or in-car camera recordings of the incident.
 - 9-1-1 audio recordings.
 - Officers' personal audio.
 - Consult Scientific Investigation Division (SID) as necessary.
 - Be guided by DM 4/212.15.

- Canvass the area for additional witnesses to the incident.
- Interview complaining party and witnesses as soon as possible,
- **NO GROUP INTERVIEWS.**
- Record all interviews and promptly book them at Scientific Investigation Division (SID) and document the media number and its storage location.
- Obtain all documents related to the incident, including but not limited to Daily Work Sheets, Daily Field Activity Report (DFAR), Field Interview Report (FI), arrest reports, evidence reports, news articles, sergeant logs, watch commander logs, detention logs, Incident History (IH), Mobile Digital Computer (MDC), citations, records, wanted fliers, etc.

Complainants

Generally interviews shall be recorded. This prevents later misunderstanding of what was said, and creates an accurate and permanent record of the interview. The preliminary investigator must attempt to narrow the focus of the investigation as much as possible. Interview each person separately so that statements are not contaminated. Additionally, the interview shall be conducted at a location and time that is convenient to the complainant or witness.

Note: Pay attention to the demeanor of the complainant and document your observations (e.g. alcohol or drug intoxication or lack of; behavioral issues).

A complainant can refuse to be recorded. When this occurs, we are required to attempt to document the refusal on audio or in writing and include the document in your Personnel Complaint Envelope “Rough notes package.” Allow the complainant to tell the story from their perspective from beginning to end. Ask questions, as necessary for clarification.

The complainant is entitled to a complaint receipt when the complaint is initiated. A receipt is generated via the Complaint Management System (CMS) and shall be provided in person, mailed, or faxed to the complainant. For a tutorial on how to complete an intake in CMS, click on the hyperlink below.

[CMS step by step workflow tutorial](#)

Anonymous Complaints Submitted by Department Employees

Department employees are required to report misconduct and may do so anonymously. The Department, therefore, should not engage in any investigatory action that may deter employees from directly or anonymously reporting misconduct. This includes any attempt to identify a Department employee who chooses to submit an anonymous complaint unless there are specific, compelling circumstances that justify such an investigative action.

Any investigating officer who believes that it is necessary to investigate the source of an anonymous complaint that may have been submitted by a Department employee must submit a written request with a sufficient and compelling justification to the Commanding Officer, Professional Standards Bureau, for approval. Such requests should take into consideration whether the seriousness of the allegations (e.g. criminal misconduct, threats to public safety) outweighs the necessity of maintaining the anonymity of the complainant.

Witnesses

As in any investigation, witnesses are key. The more time that elapses between the incident and its reporting, the greater the chance a witness will be lost to the investigation. Identify witnesses early. Seek them out and find out what they have to offer. Make note in your Chronological Log of the persons you contact even if they had nothing to offer.

What witnesses saw or heard and their proximity to the incident are important. Establishing a witness' credibility and relationship to the complainant and the accused employee is another aspect to cover.

Involved Employees

Involved employees must be identified. One way to identify them is through other complainants and witnesses. Identification may be by name or description. Daily work sheets, time sheets, activity logs, incident reports, and arrest reports are just a few of the typical documents available to connect involved employees to the related incident.

Unknown Employees

Often, complainants will provide only a general description of an employee or will not know which specific employee committed the misconduct. When an investigation is unable to identify a specific employee from among **four or fewer employees present, the four or fewer employees who fit the general description should be listed as accused employees.**

Consider the following example:

A woman complains that an officer unnecessarily kicked her thigh during her arrest, just prior to the time she was handcuffed. She describes the officer only as male. Your investigation reveals four officers were present at the woman's arrest, three males and one female.

Note: This is only a guideline; the naming of accused officers should be considered on a case by case basis, regardless of the number and will depend upon evidence and complainant identification. Additionally, your commanding officer may give you different directions under special circumstances.

Based on this example, and after exhausting all means to identify the employee responsible for the act of misconduct, the three male officers would be named as the accused employees who unnecessarily kicked the woman. However, when the number of potentially involved employees exceeds four, the accused employee should remain as UNKNOWN.

Collect and Preserve Evidence

Responsibility falls on the Department to gather and protect evidence. Evidence can take many forms depending on the nature of the complaint. *Photographing items, locations, and injuries is a vital way to preserve valuable evidence and a means to substantiate or refute allegations made.* The scene of the incident must be canvassed for additional evidence with the dates, times, and locations documented. Collection procedures should follow Department Standards for criminal investigations. Collection and preservation of evidence may mean obtaining breath, blood or urine samples from employees and obtaining and serving search warrants when legal and permissible.

Medical Treatment

If a complainant is booked for a crime and complains of injuries, ensure they receive medical treatment at a jail dispensary or contract hospital. The Health Insurance Portability and Accountability Act (HIPAA) laws prohibit the involuntary seizure of medical records. Ask the complainant to sign a medical Authorization to Release Medical Information Form so their treatment can be included in the investigation.

Documentation of the absence of injuries is just as important as the presence of injuries. Document the injuries or the absence of injuries through color photographs preferably by SID. It is also important to document any delay in medical treatment (DM 4/210.29).

Authorization to Release Medical Information Form 05.03.00

Assembling the Preliminary Investigation

All personnel complaints shall be initiated via CMS. Attach documentary evidence and/or the location and reference numbers of all physical evidence. The CF number is assigned via the CMS and is used to track the complaint and the related evidence. The preliminary investigation should contain sufficient information and evidence for the next investigator to proceed with the investigation. Once the complaint is completed in CMS, route the complaint to the appropriate supervisor or watch commander by clicking on "CF Completion" without delay.

Attach the preliminary investigation to the Complaint Form and route via CMS to a supervisor or watch commander without delay. After your supervisor reviews the Complaint Form, your commanding officer will review it and then route to IAG.

Notifications

Notify your supervisor of any complaint initiated against Department employees. Who is notified will vary depending on the scope and nature of the investigation. With very sensitive cases, verbal notification may be the best notification option. For serious complaints or incidents that may be of public interest, notification to commanding officers and staff officers up to and including the Chief of Police may be required. Anticipate the need for specialized assistance, expertise, and never hesitate to ask for advice.

Conclusion

The most crucial and critical piece in the complaint process is the preliminary investigation (Intake). By completing a thorough intake and using the LDRS concept, you, as a supervisor, are doing the Department, the accused employee(s), and the community justice. **There is NO EXCUSE for a poor preliminary investigation.** Exhaust all avenues when interviewing witnesses, collecting evidence, and insure that all of the complainants concerns are identified and addressed. Do not take short cuts in the preliminary investigation. Employees and the public deserve thorough, objective investigations. It cannot be emphasized enough that preliminary investigations are the best opportunity to get to the truth of the matter. Approach every investigation as the supervisor conducting the formal investigation.

Section 3

The Formal Investigation

When assigned a complaint investigation, the investigating officer (I/O) will begin the formal investigation. It is the goal of the Department to complete most complaint investigations within five months of the Complaint Form being received by IAG. Notwithstanding that goal, all efforts should be undertaken to ensure the entire complaint process is completed within the limitations established by state law and the City Charter.

Review the Complaint and Related Reports

Begin by reviewing the complaint and any related materials. Some of the things to look for are:

- Due dates, including the statute of limitations.
- Discrepancies between documents or statements attached to the complaint.
- *Prima facie* (elements of a crime) information for criminal misconduct, noted as “PF” in the lower-right corner on the face sheet.

Set Due Dates

The discipline process is complicated and lengthy. City Charter Section 1070 and Section 3304(D), of the California Government Code created a limitation period for the discipline process to be completed.

Note: The regulations set a one year limit from the time the complaint is brought to the attention of an uninvolved supervisor.

The investigation phase of the complaint process is a very important piece. However, supervisors need to understand once the investigation has been completed, it will undergo several levels of review for consistency and fairness before the final determination of disciplinary action is made. With this said, attempting to meet the five month goal allows more time for an adjudication to be made without the risk of failing to meet the one year limitation period.

Government Code Section 3304 prohibits punitive action or denial of promotion on grounds other than merit if the complaint investigation is not completed within one year of its being brought to the attention of an uninvolved supervisor. In cases of serious misconduct involving sustained allegations, failing to meet the statute date could affect the Department in administering discipline.

For chain-of-command cases, the completion date shall be the date the investigating officer submits the completed investigation for adjudication and shall be documented at the top of the first page of the investigation. Click on the hyperlink below to view California GC Sections 3300-3312.

California Government Code Sections 3300-3312

Tolling

Administrative due dates are driven by the need to complete and review investigations and notify the officer of intended discipline prior to the statute date as described in GC Section 3304 and City Charter section 1070. Government Code Section 3304 also allows tolling of statute dates in specific circumstances. Tolling of a statute date allows the Department to administer discipline beyond the one-year limitations period.

Tolling is a complex subject. For a list of applicable circumstances where tolling is possible, please refer to:

PSB Tolling Provisions

City Charter Section 1070

Disclosure

Under the Public Safety Officers Procedural Bill of Rights Act [1976] Sections 3300 - 3311 of the California GC, accused public safety officers are entitled to “any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential” [GC Section 3303(g)].

In 1986, the *POA v. City of Pasadena Decision* settled the debate over whether law enforcement agencies had to offer discovery pre or post investigation. The court ruled that the legislature’s intent was for officers to be presented with a copy of the investigation AFTER the investigation was completed. The court noted that it would be impractical for an agency to reveal what it knew about an

investigation to the person under investigation prior to an interrogation. Thus, it stands today that accused employees are NOT entitled to any material until AFTER the investigation is completed. However, they are entitled to know the nature of the investigation and to obtain copies of recordings of their prior interview before any subsequent re-interview [GC Sections 3303(c) and (g)].

Plan Your Investigative Strategy

Developing a strategy for the investigation will save the I/O valuable time. Discuss the case with a supervisor without compromising confidentiality. It may help to narrow the scope of the investigation and focus on the best way to proceed. Consider a consultation with experts, if necessary, especially for sexual assaults and financial or fraud investigations. Understand though, investigations can take many turns; planning is a continuous process. Below is a list of hyperlinks, which are helpful tools to assist you in planning your investigative strategies.

[Investigative Strategies' Guide](#)

[PSB Initial Responder Checklist](#)

[Common Mistakes in Complaint Investigations](#)

[Prioritizing your Caseload](#)

[PSB Investigative Plan of Action](#)

Conduct an Immediate Follow Up

As the assigned investigator, you must verify that all appropriate steps have been taken during the preliminary investigation. If any steps have been overlooked, you must address them immediately. Some common considerations are:

- Listen to the complainants' recorded statement. It may lead to the identification of witnesses and/or physical evidence.
- Locate physical evidence.
- Canvass for witnesses who might be difficult to locate later.
- Locate video evidence.
- Administer a breath test or other chemical tests.

Determine Witness and Employee Availability

Make a list of all the persons you have identified to interview for the investigation. This will assist you in planning interviews and developing investigative strategies more effectively. The list should include the following:

- Name and address.
- Days off.
- Watch start and end times.
- Vacation periods.
- Day and night telephone numbers.

The Chronological Record

The Chronological Record is an important investigative tool and is required for all complaint investigations. It is subject to discovery. A well-written log will document case progress and save time for other investigators who may be reassigned to a case. Certain information in the Chronological Record may be considered confidential, such as an employee's home telephone number. If so, it will be redacted by the concerned associate advocate (IAG) prior to the document being released for discovery, absent a judicial order to the contrary.

Complaint Chronological Record		Page 1 of 1
Complaint Log Summary		CP No. (Date/Time)
Complaint Title	Complaint Date	
Date of Occurrence Date Reported Date Investigated Date Closed or Final Date of Complaint Date of Complaint	Date of Occurrence Date Reported Date Investigated Date Closed or Final Date of Complaint Date of Complaint	Date of Occurrence Date Reported Date Investigated Date Closed or Final Date of Complaint Date of Complaint
Data Summary		
Complaint Data		
Date of Occurrence Date Reported Date Investigated Date Closed or Final Date of Complaint Date of Complaint	Date of Occurrence Date Reported Date Investigated Date Closed or Final Date of Complaint Date of Complaint	Date of Occurrence Date Reported Date Investigated Date Closed or Final Date of Complaint Date of Complaint
Total Number of Complaints		
Page 1 of 1		

It is not necessary to complete a Chronological Record in conjunction with the following disciplinary matters (DM 3/820.03):

- Failure to Qualify;
- Failure to Appear in Court;
- Preventable Traffic Collision, when there is no other misconduct;
- Use of Force Internal Process Report; and,
- Non-Disciplinary Complaints.

Commanding officers shall ensure a Chronological Record is completed by the supervisor assigned to complete a complaint investigation. The Chronological Record shall be used to document an in-depth chronological record of the investigation, recording the dates and times of initial notification and all investigative contacts and processes. It shall include the person to whom information was given as well as the supervisor completing each entry. If the same supervisor completes all entries, a statement to that effect may be made at the end of the Chronological Record and signed by the supervisor.

The CF number of the concerned complaint shall be placed in the box titled "DR" at the top of each page of the Chronological Record.

The entries made on Chronological Records should be brief but understandable for others who may read them. The entries should be objective, accurate, and professional. The entries should answer the typical *who, what, where, when, why, and how* questions, and routinely include:

- Person assigned the investigative responsibility.
- Case development.
- When case was assigned or reassigned.
- Source of complaint and how Department was made aware of misconduct.
- When and how new allegations arise (not necessary from previously established allegations).
- Due dates and progress reviews given.
- Documents or items attached to the investigation when you receive it.
- Explain time lapses or reasons for inactivity on the case.
- Evidence seized, booked, returned, analyzed, etc.
- Requests for analyses (and results) or requests for photos.
- Notifications and expert opinions, e.g., C/O, OIC.
- Photographs taken or received.
- Telephone calls and appointments attempted, made, or canceled.
- Interviews (these entries should include a one-line summary of whether the subject supported, refuted, denied, or admitted the allegations).
- Due diligence of warrants, statute problems, attempts to locate persons, delays, computer systems accessed.
- Sources of information checked, e.g., utilities, Department of Motor Vehicles (DMV).

Note: Only the date and time of all privileged communications should be documented in the Chronological Record.

Avoid the following types of entries in your Chronological Record:

- Confidential information.
- Opinions or conclusions.
- Rumors.
- Identities of confidential informants.
- Unprofessional remarks.
- Legal advice from the City Attorney.

City and State laws establish the limitation periods during which an employee may be discharged, suspended, demoted in rank, or suspended and demoted in rank. Since the limitations period is based on the date the misconduct was discovered by an uninvolved supervisor, documentation of the date on which specific information is obtained is essential. Generally, this will be the same as the "Date/Time Reported" on the Complaint Form. On occasion, the initial information may be too vague to constitute misconduct and/or additional misconduct may come to the Department's attention during the subsequent investigation (DM 3/820.05).

Note: Following Skelly procedures, the original Chronological Record is to be forwarded with the completed Complaint Form through channels to IAG. Generally, the Chronological Record should **NOT** be used by the commanding officer in adjudicating the complaint and, thus, should not be included in the materials given to the accused employee (DM 3/820.05).

Supervisors completing a Chronological Record in conjunction with a complaint investigation should be aware that the Chronological Record may be subject to discovery. Any Chronological Record completed in conjunction with such complaints shall **only** be released after confidential information, if any, is redacted and with the approval of the C/O, IAG.

When the investigation is completed by IAG, the Chronological Record shall be retained by IAG pending the adjudication of the complaint.

Assembling the Case Notebook

Immediately upon being assigned a new case, you should assemble a case notebook. The case notebook format was adopted from the format for homicide investigations. Place an alphabetical or numerical set of dividers into a three-ring notebook. Items in your notebook that you do not include in your addenda, or as part of the final investigation, should be placed into an Investigators Case Envelope (rough notes package). Rough notes are filed for future reference and are generally subject to discovery after confidential information is redacted. Rough drafts of the investigation report and *copies* of the Chronological Record should **NOT** be retained as part of the rough notes.

The following is a partial list of some of the documents that may be obtained at the early stages of an investigation, if not already gathered by the intake supervisor:

- Copy of the initial complaint form.
- Crime and arrest reports, or miscellaneous reports which have a bearing on the allegation.
- Any necessary photographs of officers, witnesses, or complainants.
- Photographs of injuries and injured areas, visible or not.
- Diagrams and photographs of the scene.
- Timeline of the events.
- Witness list, including telephone numbers, addresses, and available dates.
- Chronological record.
- Medical treatment records only obtained with a signed authorization form.
- Documents that establish prior contact between the complainant and the accused employee.
- The accused Disciplinary Review TEAMS report.

Interview of Supervisors

Investigating Officers shall interview all supervisors at the scene of an incident in which alleged misconduct occurred. If necessary, meet with the intake supervisor to obtain any insight on additional details that may not be readily apparent in the preliminary investigation.

Supervisors that are in possession of any additional notes, documents, photographs, etc., which were not included with the complaint, must be turned over to the I/O for inclusion with the investigation. Investigations can be adversely affected when, at subsequent hearings, the initial supervisor who took the complaint testifies to the existence of rough notes and the investigator is unable to produce them. Such a situation gives the defense the opportunity to argue that these notes contained exculpatory information.

Examine the Scene

Insight can be gained by going to the location where the alleged incident occurred. This insight will help in the preparation of questions for the witnesses, complainant and accused. The visit and insight will help identify the inconsistencies and missing information during the interview. The scene should be canvassed for witnesses and evidence. If this was not done during the preliminary investigation, the investigator will be responsible for doing so. Document this visit on the Chronological Record. When visiting the scene, view it at the same time of day as the incident occurred. Determine lighting, traffic,

noise levels, weather, and types of neighborhoods vary greatly. They can play a factor in the investigation.

Take the opportunity to draw a diagram of the scene. A diagram may be helpful when conducting interviews later. The diagram may also be helpful to the adjudicating officer, a Board of Rights Panel, a Civil Service Hearing Officer or a Superior Court Judge, should the disciplinary action be appealed. Try to determine the relative positions of witnesses or others at the scene.

Some considerations for viewing the scene are listed below:

- Become familiar with the layout.
- Identify specific locations of witnesses and employees.
- Is the location in a business, residential, or commercial area.
- Gather any physical evidence that is present.

Gather and Book Physical Evidence

It is the responsibility of the intake supervisor to gather and book physical evidence upon intake and to have the evidence analyzed as necessary. Potential physical evidence might include, but is not limited to:

- Items belonging to employees (batons, boots, flashlights, etc.) or complainants.
- Samples obtained for testing. Blood or other bodily fluids (in most cases if not done during the time of the incident, it is too late).
- Fingerprints.
- Ballistic evidence.
- Video surveillance tapes.
- Check nearby businesses and City streets for video cameras.
- Obtain any audio/video recordings or in-car camera recordings of the incident.
- 9-1-1 audio recordings.
- Officers' personal audio or video.



Photograph evidence at the location of its seizure whenever possible.

Follow the Departments' normal procedure for booking such evidence, including issuing property receipts to the owner. Retain property receipts with in the rough notes package; do not make them part of addenda unless they are directly relevant to the investigation. Consult SID as necessary (DM 4/510.10).

When booking evidence to be analyzed, obtain a DR number. Any time evidence is booked for a personnel investigation, make a note on the Property Report and evidence package for the investigator to be contacted prior to the release of analysis results or the item itself. This effort will safeguard the information by preventing accused employees from learning the results of analyses.

Some instances in which such a procedure would be appropriate are listed below:

- Analysis of an employee's urine or blood;
- Analysis of suspected narcotics seized from an employee.
- An investigation involving a sexual assault.

Photographs

Photographing Evidence

If not obtained by the intake supervisor, arrange to have photographs taken of evidence, preferably at the location of its seizure. Such photographs are easier to handle than the physical evidence itself. These are also useful during interviews and at future criminal or administrative hearings. Specifically, photographs might be taken of the following:

- Injuries and the absence of injuries.
- Location of incident.
- Equipment violations.
- Property damage.
- Objects used in an unauthorized force complaint.
- Stains on clothing.

Photographs of the Scene

Photographs taken of the scene of the alleged incident are often useful. They provide a perspective that is missing from a written explanation or sketched diagram. For example, when lighting is an issue, a photograph taken at the same approximate time of day and under the same lighting conditions as the incident might be useful, or photographs taken from the vantage point of witnesses could help in evaluating credibility.

Photographs of Persons

Some investigations involve numerous complainants and/or witnesses. In other cases, the identity of a complainant or witness may be in question. Photographs of complainants and witnesses can be helpful during interviews and in the subsequent review of the investigation.

If witnesses or complainants were arrested in connection with the alleged incident, recent booking photographs may be useful in the investigation. However, the use of dated booking photographs, especially those of persons who have not been arrested in many years, should be avoided.

Sensitive photographs

Photographs of genitalia of civilian and sworn are a sensitive matter and should be handled with the appropriate modesty. In all cases, photographs of that nature shall be taken by SID. Any party can give informed consent to such photographs if the material is admissible by law to prove allegations in an investigation. As these photographs are considered strip searches under the law, and a search warrant is needed for civilians who do not consent. Search warrants will not be issued for administrative cases. A witness of the same sex will be present with SID photographers. The name and serial number will be documented on a witness form. For sexual assault investigations, a female's genitalia will not be photographed by SID. The photographs will be taken by Sexual Assault Response Team (SART) members at the appropriate facility.

While an employee may consent to be searched in such a way that would constitute a strip search, approval should nonetheless be sought and received from a staff officer, at the rank of commander or above, preferably in the employee's chain of command, before proceeding with any search more intrusive than a pat-down (outer clothing) search. Moreover, a captain or civilian commanding officer from the employee's division should be present to supervise the search. When IAG is conducting the investigation, a captain from IAG may supervise the search in lieu of the employee's commanding officer.

Photographs of sworn officers' genitalia are considered strip searches. A strip search is defined as a visual search of the employee with clothing arranged or removed to allow for inspection of the underclothing and the immediate area of the breasts, buttocks, or groin. Such a search does **NOT** include a search of any body cavity.

Canvas the Scene for Additional Witnesses

The key to completing conclusive investigations is identifying credible witnesses. When you go to the scene to view, diagram, and/or photograph it, you should take the opportunity to canvas the area for new witnesses. Going to the scene at the same time of day as the incident occurred will allow you to notice similarities. For example, persons coming home from work, those who are home during the day, or a

person who walks the dog at the same time every day. Look for witnesses in places with a vantage point toward the incident.

All contacts should be documented, including those who say they have no knowledge of the incident. Your Chronological Record should reflect these contacts. You can later include these contacts as Investigator's Notes in your investigation.

Note: The scene of the incident must be canvassed for additional evidence with the dates, times, and locations documented.

A typical entry might appear as follows:

The following persons were contacted during this investigation. All said they had no knowledge regarding the alleged misconduct:

*Jones, James, 123 Main Street, Los Angeles, (213) 555-1212
Contacted: June 1, 1996, at 0830 hours*

*Smith, Mary, 987 East Hope Street, Los Angeles, (213) 555-2121
Contacted: June 1, 1996, at 0900 hours*

Obtain Medical Records

Attempt to obtain all relevant medical treatment records for incidents in which the medical condition is a factor. Medical records are confidential documents and require a signed Authorization to Release Medical Records Form from the patient. Health Insurance Portability and Accountability Act (HIPAA) laws prevent the involuntary seizure of medical records except through search warrant.

At the end of interviews, ask interviewees, whose medical treatment is a factor, to sign a release for each medical facility from which records will be requested. As mentioned above, document the injuries or the absence of injuries, through color photographs. It is also important to document any delay in medical treatment. Ensure all injuries are photographed (DM 4/210.29 & DM 4/212.15).

For a copy of the Medical Release Form, click on the hyperlink below.

[Authorization to Release Medical Information](#)

Minors require special consideration. Obtain a signed medical release from the minor's parent or legal guardian, unless the minor is emancipated. If the minor was treated at a detention facility, medical releases must be presented with a *Petition for Disclosure of Juvenile Records*, Court Form No. JV570, to the Presiding Judge of the county's Juvenile Court. For the County of Los Angeles, the Juvenile Court is:

*Presiding Judge, Los Angeles County Juvenile Court
201 Centre Plaza Drive, Suite 3
Monterey Park, CA 91754*

Obtain Financial Records

The nature of some investigations may require a review of financial records; however, when this occurs, proceed cautiously. According to GC Section 3308, officers cannot be compelled to provide financial records, EXCEPT under four conditions:

- When state law requires it.
- Legal process (search warrant or subpoena).
- Conflict of interest (connection must be made to position as an officer).
- Specialized assignment.

Requesting relevant financial records from witnesses and complainants (not employees) requires a signed release, as financial records are confidential documents. Financial institutions will only release customer records with a signed letter of release. At the end of interviews, ask subjects whose financial records are a factor, to sign a release for each financial institution from which you will request records. Internal Affairs Group has an approved financial release form letter, which you should carry with you during your investigations. For a copy of the Financial Records Release Authorization Form, click on the hyperlink below:

[Financial Records Release Authorization](#)

Framing the Allegations

It is preferable to frame the allegations at the end of your investigation, not the beginning. If we frame allegations too soon, we can fall into the trap of being too narrowly focused. We have essentially put blinders on, and as a result, we may miss valuable clues, information, evidence, etc. We cannot be guided only by what the complainant alleges. The framed allegations may not match the complaint form. If this is the case, explain in an Investigator's Note.

Allegation headings are used to divide a statement into the parts which are relevant to each allegation. The headings are simply numbered according to the numbers you assigned to each allegation in the SUMMARY section (e.g., ALLEGATION 1, ALLEGATION 2, etc.). Include all parts of a statement relevant to an allegation under the numbered allegation heading. The adjudicator should not have to depend on any other information from another part of a person's statement in order to evaluate a particular allegation.

Some guidelines for writing allegations are listed below:

- Frame the allegations at the **end** of the investigation, not the beginning.
- Do not include the classification categories while framing the allegations.
- Do not allege criminal misconduct using legal criminal terminology.
- The *facts* of the alleged acts should be framed to avoid binding the City to have to prove cases to criminal or civil standards.
- If more than one employee is accused of the same misconduct, separate allegations must be framed for each.
- Allegations should be in **Bold**.

When attempting to frame allegations, here are questions to consider:

- What has the employee allegedly done wrong?
- Who is the accuser?
- What was the date?
- Who is the accused?
- Was he/she on-duty or off-duty?
- Improperly, inappropriately or unnecessarily.
- What did he/she do that was misconduct?

Examples of allegations:

ALLEGATION 1. Complainant Allen alleged that on July 29, 2013, Officer Adams, while on-duty, unreasonably struck him repeatedly with a baton, causing visible injury.

ALLEGATION 2. Complainant Allen alleged that on July 29, 2013, Detective Jackson, while on-duty, unreasonably struck him repeatedly with a baton, causing visible injury.

Click on the hyperlink below to see examples of how to frame allegations:

[Suggestions for the Wording of Allegations](#)

Section 4

Preparing for Interviews

Background preparation and planning are key to conducting thorough interviews. Being familiar with background information will give you an edge during interviews. One caution about this step: Do not allow yourself to form preconceived notions about persons or events that could compromise your objectivity.

Researching Background

Frequently, interview subjects will reveal critical information in unexpected or off-handed comments. A well-prepared investigator will be able to recognize the significance of such comments and capitalize on them. Privacy rights of all persons are important. Background research should only be conducted in areas and on persons that are germane and relevant to the investigation. Some sources of information are listed below:

- Crime and arrest records.
- Marriage, divorce, death, and bankruptcy records.
- Department of Motor Vehicle records.
- History of complaints made against agencies.
- Public records queries for information reported in the print media.
- Internet search engines.

The amount and nature of research conducted on any particular subject will depend on the nature and scope of the investigation; the need to know, right to know issues; and finally, relevance of the information to the investigation.

Defining Interview Objectives

Before conducting the interviews, form a clear understanding of what is to be accomplished in the interview. Some common objectives are listed below:

- Identify other witnesses or accused employees.
- Clarify allegations (determine what occurred).
- Resolve discrepancies and inconsistencies.
- Obtain information on motive or alibi.
- Obtain information on guilt or innocence.
- Clarify discrepancies in previous statements.

Preparing Questions

Preparing questions in advance of the interview is one approach to conducting the investigation. Consult with peers, supervisors, and experts for proper questions that will address the concerns of the specific investigation. A list of general guidelines will help form questions.

- Consult strategy sections of this guide.
- Arrange questions in chronological order.
- Specific questions should address every concern raised by the complainant.
- Type the list of questions and leave room for notes.
- Highlight key questions.
- Give the interview partner a copy of the questions list in advance (do not give the list to subjects).
- Check off questions only after a satisfactory answer.
- Review the list before concluding the interview.

Note: Do not rely solely on prepared questions. Listen carefully to the answer and be prepared to follow up with appropriate questions that were not anticipated.

Scheduling Interviews

Generally, all interviews should be scheduled in advance and conducted in person. All accused employees shall be interviewed in person. However, occasionally an in-person interview of a witness is not practical. Subjects who refuse in-person interviews or whose location makes an in-person interview impractical may be interviewed by telephone. Telephonic interviews shall also be recorded, and the subject should be advised of the recording in advance.

Interrogatories can only be used by IAG personnel with the section OIC approval. Click on the hyperlinks below for guidelines and examples when using Interrogatories:

[Guidelines for use of Interrogatories](#)

[E-mail text for e-mail Interrogatories](#)

Determine Witness and Employee Availability

Make a list of all the persons who have been identified for interview. This list will assist in planning interviews and developing investigative strategies more effectively. The list should include, but not be limited to, the following:

- Department employees:
 - Name and Division.
 - Check days off.
 - Day and night numbers.
 - Watch start and end times.
 - Vacation Period.
 - Email address.
 - Telephone numbers (home, cellular, work).
 - Note the best time to be contacted.
- Non-department employees:
 - Name.
 - Date of Birth.
 - Address or hang outs.
 - Alternative contact information (family member, social media).
 - Email address.
 - Telephone numbers (home, cellular, work).
 - Verify identity, e.g., CDL, CA ID, SSN.
 - Note the best time to be contacted.

Department Employees

Public Safety Officers have the right to have a representative present during interviews when the questioning focuses on matters which “are likely to result in punitive action against the public safety officer” (*Government Code §3303*). All union employees have this right based upon a United States Supreme Court decision, *NLRB v. Weingarten, Inc.* They must be given a reasonable amount of time to obtain a representative of their choice. Generally interviews with Department employees are to be conducted within 10 days of notification. It may be extended at the *discretion* of the investigator. A busy schedule of a representative or attorney is not an acceptable reason to delay the interview beyond 10 days.

Each employee bargaining unit (union) has different agreements under their respective contracts. Consult the specific Memorandum of Understanding (MOU) if there are questions regarding the rights of employees. Generally, employees cannot be represented by someone from a different representation unit.

Note: It must be emphasized that this extension is at discretion of the investigator, NOT a right to be exercised by the employee or their representative. The employee has a right to choose their representation. If that representative is not available on the assigned date the employee can either select another representative or proceed without one.

It is preferred that interviews of employees be scheduled during the employee's regular working hours. On those rare occasions when the interview must be conducted while off duty, it should be done during his/her normal waking hours. Occasionally, the seriousness of the investigation may require an immediate, off-hour interview. When interviews of employees occur during non-working hours, the employee **MUST** be compensated as such interviews are considered "required work," as defined by the United States Department of Labor, Fair Labor Standards Act (FLSA).

Probationary Employees

Sworn probationary employees constitute a special class in regards to representation and the administration of discipline:

- The sworn probationary period is generally 18 months from the first day of academy training.
- The probationary period can be extended beyond the 18 months under certain circumstances. Position Control Section, Personnel Division, maintains the official record of probationary extensions. Include the probation end date as an Investigator's Note.
- Sworn probationary employees fall under the protections of GC Section 3300.

Reserve Officers

Reserve Officers are not City employees. Reserve Officers' powers are defined by Penal Code Section 830.6; therefore, they are not protected under GC Section 3300.

The Department Manual states, "Officer involved Shootings, on-duty traffic collisions, and allegations of misconduct involving members of the Police Reserve Corps shall be recorded and investigated in accordance with procedures applicable to regular employees" (DM 3/870).

The following penalties may be administered for sustained allegations of Reserve Officer misconduct:

- Admonishment.
- Official Reprimand.
- Placement on Inactive Reserve status for six months or less. (A reserve officer on Inactive Reserve status shall not perform any official Department duties).
- Termination.

Civilian Employee

Labor laws and Department policies differ slightly between civilian and sworn employees when it comes to administrative investigations and personnel matters. Some considerations for dealing with Department civilian employees are listed below:

Limitations Period

Effective January 1, 2002, GC Section 3508.1 established a limitations period for imposing discipline against civilian police employees. The limitation period is defined as one year between the time the complaint is brought to the Department's attention to the time of proposed disciplinary action.

Representation

Civilian employees are not protected under GC Section 3300. However other case law exists which affirms the right of employees to be represented by a member of their labor organization during administrative investigation interviews (*NLRB v. J. Weingarten, Inc.*). Civilian employees may waive their right to a union representative and opt instead to have a Department employee as a representative; however, the Department employee must be a member of the same collective bargaining unit.

Self-Incrimination

Follow the same procedures for admonishing civilian employees as you do for sworn employees (i.e., *Miranda* and *Administrative* admonishments) during investigations involving criminal misconduct. When an administrative investigation involves criminal allegations, civilian employees shall be read the *Miranda Admonition*; and upon their refusal to waive, they may be ordered to answer questions with the stipulation that their compelled statement cannot be used against them in any subsequent criminal proceedings (*Lefkowitz v. Turley, et al*). Thus, civilian employees can be compelled to answer questions and are protected by similar case law as sworn employees (i.e., *Lybarger v. City of Los Angeles*).

Witnesses (not employees)

Interviews of witnesses or complainants, who are not Department employees, should be scheduled at a convenient time and place while avoiding unnecessary delay to the investigation. Make an attempt to conduct interviews in-person. If the person is not home you should leave a business card. Contact letters should also be sent to the subject, as well as attempts to contact by telephone. Chronological Record entries shall be made to memorialize good-faith efforts to interview the person. When a witness or complainant who is not an agency employee objects to a recorded interview, attempt to explain the rationale for recording. If the subject still refuses to be recorded, it is required to attempt to capture the refusal on audio or in writing. Document the refusal and continue with the unrecorded interview and take copious notes.

Length of Interviews

Interviews will vary in length depending on the gravity and complexity of the investigation. Schedule enough time to conduct a thorough interrogation without being rushed. According to GC Section 3303, interviews of Public Safety Officers “shall be for a reasonable period.” Department policy neither specifies the maximum length for an interview nor the maximum length of a break. Lengthy interviews may be continued on another day; however, you should end the interview by stating on the audio recording that the subsequent meeting will be a continuation of the same interview and not a “re-interview” to avoid any misunderstanding or expectations involving GC Section 3303(g). Keep in mind your objectives and a sense of fairness.

Location of Interviews

Department employees should be interviewed at a convenient time and place for all parties involved. Such places include Department facilities, Union and Attorney’s offices. Whenever possible, accommodate non-employees by conducting interviews at their home or business, and at their normal waking hours. This expectation does not preclude an interview at a police facility when the complainant or witness is already present at the facility.

Once you confirm your interview dates, reserve an interview room. Do not assume one will be available when you want it. Use a location that is quiet, private and has necessities like tables, chairs, electrical outlets, etc.

Tape Recording Interviews

Employees

Department employees are obligated to submit to recorded interviews. Government Code Section 3303 provides for the recording of public safety officers.

Off-Tape Discussion

Off-tape discussion should be avoided as much as possible. Interview subjects often speak frankly during pauses in questioning, revealing information the investigators might not otherwise have obtained. At the announcement of a break, it is not unusual for subjects to relax and make significant comments or admissions. If this occurs, when you go back on the record, repeat the statement and have the subject verify that it was said.

California Penal Code Section 632 prohibits surreptitious recordings (audio and/or video) for investigations that are administrative in nature. Surreptitious recordings are only permitted for investigations that are criminal in nature. Check with your supervisor before engaging in any surreptitious operations.

Equipment

One of the most embarrassing moments for investigators is when, after a lengthy interview, you discover the recording device has malfunctioned, and you have to ask to do it again. Such embarrassment can be avoided by following the guidelines listed below:

- Test the recorder, ensuring each subjects' voice can be heard from where they are seated.
- Test the recorder at the beginning and end of each interview.
- Note the location and operation of start/stop/pause buttons.
- Notify everyone present when you begin/stop recording.
- On the record, note the time and date the recording began/stopped.
- When breaks are necessary, note the start and end time and that the admonishments are still in effect.

Order of Interviews

The order of interviews will frequently be controlled by the circumstances of the investigation and the type of complaint. As a general rule, interviews should be conducted in the following order:

- Complainant (interviewed as soon as possible).
- Non-Department witnesses.
- Employee witnesses.
- Accused employees (most culpable last).

Interview / Interrogation Outline for Subject / Witness Officer

Section 5

Conducting Interviews

With the background and preparation done, the next step in an investigation is conducting the interviews. Your demeanor during interviews must be respectful, courteous, professional, and above reproach at all times. As the investigator, you are the fact gatherer, not the fact finder. You must be willing to accept the varying versions of events that subjects give, but this does not mean you cannot confront persons with discrepancies between statements and/or other evidence.

Government Code Section 3303

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.

Primary Investigator

The primary investigator plans the case strategy and leads the interviews. Customarily, the primary investigator has the following responsibilities during the interview:

- Sets the questioning strategy prior to the interview.
- Leads and controls the interview.
- Asks the bulk of the questions from your questions list (see page 28).
- Operates the digital recorder.
- Takes notes as necessary.

Secondary Investigator

The secondary investigator assists and supports the primary investigator. Customarily, the secondary investigator has the following responsibilities during the interview:

- Takes thorough notes.
- Observes the subject's actions including body language.
- Identifies other subject areas to probe.
- Forms additional questions while listening to the interview.
- Follows up with questions after the primary investigator has finished.

Note: Avoid speaking over each other. More than one person speaking while on audio is impossible to comprehend upon review. Establishing who will ask questions, and at what point in the interview, will limit the times one person talks over another.

Observers

Public Safety Officers may be interrogated by no more than two investigators at one time. Observers, such as a trainee or the investigator's supervisor, may observe the interrogation; however, the observer may not participate by asking questions. It is permissible to exchange roles, for example after a break. The identity and role of the observer should be noted on the audio recording (GC Section 3303).

Note: The IAG commanding officer shall be notified in advance when command or staff officers are to be interviewed. Generally, an IAG captain or lieutenant will observe the interview, especially if the subject of the interview is the accused.

Representation

Public Safety Officers

The right to representation is clearly defined in GC Section 3303. Public Safety Officers have the right to a representative of the officer's choosing whenever an interrogation focuses on matters which are likely to result in punitive action against the officer. However, the officer's right to select a representative is not absolute; the choice is subject to reasonable considerations of the representative's availability, the urgency of the investigation, and limitations outlined in the employee's MOU. The representative may not be a subject of the same investigation. In most instances, the representative will be an employee representative.

Additionally, officers may choose to have an attorney as a representative instead of, or in addition to, the employee representative. This is most common in cases involving serious criminal misconduct. With the exception of the usual provisions under *Miranda* in criminal investigations, investigators are not obligated to inform officers of their right to a representative. However, in the interest of saving time and fairness, it is a good practice to remind officers that they are entitled to a representative; this is especially true for new officers who might not know of their right to representation.

Note: Never tell an officer that he/she does not need a representative, or that he/she does not have a right to a representative.

An employee has the right to have a representative of their choice; however, they may not be available when the interview is scheduled. This should not be used as an excuse to delay the investigation. After giving the employee a reasonable amount of time to schedule a representative, inform them that the interview is going to proceed. Note any deviations in the Chronological Record.

Note: When an officer has no representative present at the interview, it's a good practice to have the officer acknowledge on tape that he/she has chosen not to have a representative present. This will prevent a future accusation that you denied the officer the right to a representative.

Civilian Employees

Though civilian employees are not protected under GC Section 3300, other case law exists which affirms the right of employees to be represented by a member of their labor organization during administrative investigation interviews (NLRB v. J. Weingarten, Inc.). Civilian employees are represented by different bargaining units, each with their own MOU. Generally, employees cannot be represented by a member of a different representation unit. Civilian employees may waive their right to a union representative and opt instead to have a Department employee as a representative; however, the Department employee must be a member of the same representation unit.

Self-Incrimination

Follow the same procedures for admonishing civilian employees as for sworn employees (i.e., Miranda and Administrative admonishments) during investigations involving criminal misconduct.

When an administrative investigation involves criminal allegations, civilian employees should be read the Miranda Admonition; and upon their refusal to waive, they may be ordered to answer questions with the stipulation that their compelled statement cannot be used against them in any criminal proceedings

(Lefkowitz v. Turley, et al). Thus, civilian employees can be compelled to answer questions and are protected by similar case law as sworn employees (i.e., Lybarger v. City of Los Angeles).

Non-Department Witnesses

Non-Department witnesses (complainants) should generally be interviewed in private. As the investigator, you have the discretion to allow third party observers; however, the presence of friends or family can complicate the interview or skew its objectivity. Conversely, allowing a parent to be present during the interview of a young juvenile sexual assault victim could make the interview easier.

When the interviewee insists on having a friend or family member present, you may allow it. However, you should minimize the observer's impact by cautioning the observer not to participate in the interview. You can also minimize the observer's presence by arranging the seating. Occasionally, the observer will be an attorney for the subject. Most attorneys understand the process and will let you conduct your interview uninterrupted. It may help to admonish the attorney in advance that his/her presence is as an observer, not to answer questions for the subject, and that you will allow him/her to ask questions at the end of the interview.

Defining Interview Objectives

Before conducting the interviews, you should form a clear understanding of what you want to accomplish in the interview. Some common objectives are listed below:

- Identify other witnesses or accused employees.
- Clarify allegations (determine what occurred).
- Resolve discrepancies and inconsistencies.
- Obtain information on motive or alibi.
- Obtain information on guilt or innocence.
- Clarify discrepancies in previous statements.

For a list of interview techniques, click on the hyperlink below.

[Internal Investigations Course Interview Techniques](#)

Preparing Questions

Preparing a list of questions in advance of your interview is one approach to conducting the investigation. Consult with peers, supervisors, and experts for proper questions that will address the concerns of the specific investigation.

A list of general guidelines that will help you form questions are listed below:

- Arrange questions in chronological order.
- Specific questions should address each specific allegation.
- Type the list of questions and leave room for notes.
- Highlight key questions.
- Give your interview partner a copy of the question list in advance (Do not give the list to your subjects.)
- Check off questions only after you receive a satisfactory answer.
- Review the list before concluding the interview.

Note: Do not rely solely on prepared questions. Listen carefully to the answer and be prepared to follow up with appropriate questions that were not anticipated.

Strategies for Questioning

The following guidelines will help you conduct a smooth, professional interview:

- The primary investigator asks the bulk of the prepared questions.
- The secondary investigator takes copious notes, writing additional questions in the margin.
- Subjects should be asked direct, specific questions to address each allegation.
- Ask for specific admissions or denials from accused employees for each allegation, e.g., “Did you strike Bonnie on the head with the beer bottle?”

For a list of further strategies for questioning, click on the hyperlink below:

[**Tips on Questioning Difficult Witnesses**](#)

Beginning the Interview

Precede interviews by completing a “lead-in” sheet for the person being interviewed. The lead-in is a scripted guide for identifying each person present at the interview as well as other information which will be needed to include when writing the statements. Begin the interview by reading the lead-in into the record. Using the lead-in will also ensure that the information required by GC Section 3300 is entered into the record.

Click on the hyperlink below for a copy of the lead-in Advisement Forms.

[Lead-in and Advisement Form \(Department Employee\)](#)

[Citizen lead-in Form \(Non-Department Employee\)](#)

After the lead-in, give a brief explanation about the purpose of the interview. DO NOT reveal any information which would compromise the investigation. However, accused employees are entitled to know the nature of the complaint. Be prepared to review documents or physical evidence with the subject. Use only a generic, sanitized diagram and have the subject fill in the information as the subject recalls it. This practice will keep a subject’s recollection from molding to the statements of others. Later, create a comprehensive or summary diagram, if needed.

Ask each subject to show his/her location on the diagram in relation to the incident and the other parties’ locations, and then **ask the subject if he/she was in a position to see or hear the act in question.**

Each allegation and all relevant issues should be addressed with each witness. Allow the complainant to tell the story from their perspective, in his/her own words, from beginning to end without interruption. Then, ask questions, as necessary, for clarification. Typical questions are listed below:

- What happened?
- Who was with you?
- Were you injured?
- What was said or done?
- Who said it or did it?
- Where did it happen?
- When did it happen?
- Exactly how did it happen?
- How long was the encounter?
- Were you detained/arrested/cited?
- Were you searched/handcuffed?

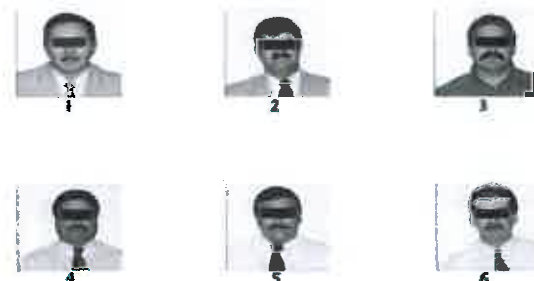
- Did anyone else see/hear it happen?
- How many persons were present?
- Nature of the relationship to the accused?
- Did it (specific allegation) happen?
- Did you do it?
- Did you see who did?
- Who was present when it happened?
- Were you in a position to see or hear if it occurred or if it happened?
- If not, why not?
- Do you think the other witnesses were in a position to see or hear it?

It is important that you establish the relationship between all the parties present and involved at the incident. Perceptions, statements, and credibility will vary depending on the subjects' relationships to each other.

Note: The need to re-interview a subject is always a possibility, so do not forget to verify personal information with subjects. This is especially important for subjects who are transients. In absence of an address, you can document hangouts, relatives, or employment information.

Conducting Photo Show-ups

An important goal of every investigation is to identify the accused employee or person. Identification takes many forms: name, description (physical and clothing), process of elimination, or acknowledgment by the employee. When certainty of a subject's employee identification is in question, prepare a photo display folder "six pack".



The photographic line-up should be conducted following the same guidelines as for a criminal investigation. A photographic line-up is used to verify or eliminate accused employees (DM 2/900.30; DM 4/738). Investigators should follow these steps:

- Prepare the folder properly, following established procedures.
- Make a photocopy of the prepared folder.
- At the interview, admonish the subject per the prescribed admonishment located on the back of the display folder.
- Show the subject the display folder.
- Allow the subject ample time to view the display.
- Audio record the show-up.
- If the subject identifies someone, direct the subject to circle and initial the identified person on the photocopy of the display folder.
- Have the subject complete a Photo Identification Report, Form 15.50.4

The reliability of any identification will depend on how closely the investigator follows the established guidelines.

The DON'Ts of Photo Show-ups

- Do not tell the subject if the correct person was, or was not, identified.
- Do not give hints or lead the subject in any manner during the identification.
- Do not place the accused employee in the same window of multiple folders.
- Do not disassemble the photo display folder after the investigation is completed. It should become part of the addenda. A color laser print of the folder may be more suitable as an addenda item. Be sure to retain the original display folder in the Personnel Complaint Envelope.

Interview Goals

Interviews of complainants have five important goals:

1. Identify all allegations of misconduct against Department employees.
2. Determine if any allegation of misconduct is against any Non-Department employee.
3. Ensure that every allegation is addressed in the interview.
4. Note and clarify discrepancies.
5. Identify all involved employees and additional witnesses.

Your basic questions will follow the “Who, What, When, Where, Why and How” format plus additional probing questions that will be determined by the nature of the investigation. An investigation will not be considered complete unless every allegation is addressed by the complainant and the accused employee (*See the section on intake for additional strategies*).

It is not uncommon for a complainant’s recollection to change from the initial time of the incident to the time of interview. Memory lapses or unconscious suppression, individual perspectives, elapsed time, conferring with others, etc., all contribute to the ability to recall events. Regardless of the cause, it is important for you to clarify, resolve, and document any discrepancies between the complainant’s statements and/or the officer’s statements. Include the following as part of the complainant interview process:

- Examine and photograph injuries, including areas where no visible injury exists but is alleged based on statements.
- Obtain a signed Authorization to Release Medical Information Form, if applicable.
- Probe contradictions from incident printouts, logs, reports, etc.
- Determine the reason for delays in reporting the misconduct.
- Establish the complainant’s motive for making the complaint. For example: Was the complaint made to reduce culpability in a criminal matter or because the misconduct actually occurred?
- Determine the complainant’s availability for follow-up interviews and willingness to testify at an administrative and, if appropriate, criminal hearing.
- Obtain additional witness information.

At the conclusion of the interview, you must remember to verify if the complainant has additional allegations or complaints. Do not ask leading questions to solicit more allegations, rather ask generally, using words to the effect:

Do you have any additional concerns or information to bring to our attention before we conclude the interview? OR

Is there anything you can tell us that will aid us in this investigation or that you think we should know?

Uncooperative Subjects

Maintaining an objective, open mind will help you on the occasions when interview subjects are uncooperative or agitated. Remain calm, understanding and professional during the interview. Most uncooperative subjects' behavior can be linked to a perception of victimization or a feeling of being treated unfairly.

Certain phrases can help you through a difficult interview and provide an opportunity for the subject to fully explain his or her observations and perceptions:

- I see. Tell us what happened next.
- I know I'm asking a lot of questions, but please understand that I was not there. I need you to fully describe the situation for me so I can understand what happened.
- I'm sorry, would you please verbally state your answer? When you nod, the digital recorder won't pick up your answer. Thank you.
- Are those your words or the officer's? Please tell me the exact words the officer said, if you remember.

When a particular question or area agitates the subject to the point that it's hampering your interview, move on to another area and come back to it later. You might also consider taking a break to diffuse the situation and allow the parties on either side the opportunity to step back and return in a more neutral position.

Consult your supervisor when an uncooperative witness is a member of another agency or an employee with another City department. Advise your supervisor when you feel you have made good-faith efforts to contact complainants or witnesses for interviews. Document your efforts on your Chronological Record. Other methods such as sending letters and Grand Jury subpoenas (in cases of serious criminal misconduct) may convince subjects to submit to interviews.

Interview Read-back

Upon concluding the questioning portion of the interview, conduct a "read-back," wherein the details of the subject's statement are restated. This is the *summary* portion of the LDRS concept. If necessary, take a break and prepare notes. Then, reconvene the interview on the record and begin the read back. Allow the subject to clarify any points that he/she feels are inaccurate.

When a subject suggests a substantial correction, one that reverses the previous statement, note the change as part of the statement and include an explanation that the subject changed his/her statement upon the read-back.

During the read-back portion of the interview, Jones changed the part of his statement in which he said Officer Smith struck him in the face with the baton. Jones wanted the statement to reflect that he was injured when Smith kicked him in the face with the right foot.

While still recording, ask the subject to acknowledge that your read-back summary of the statement was accurate as corrected. This is an important step and is not to be overlooked. Weighing credibility during the adjudication phase hinges on these contradictions.

Explain to subjects that it is sometimes necessary to re-interview to address information acquired after their interview. Ask subjects for the best times for future interviews. If a read-back of the statement was not possible during the initial interview, schedule the time before the subject is dismissed.

Writing the Statement

Write the summarized statement, as soon as practical, after the interview. Unlike verbatim transcriptions, summaries have the potential for bias, whether intentional or not. The biggest challenge will be writing an objective, accurate summarized account of the subject's statements. The statements should be free of opinion or biases from the investigator. Additionally, be cognizant to avoid the omission of information.

Recants

When complainants recant their allegations, the investigator shall document the recantation in their statements and proceed with the completion of the entire investigation. It is the investigator's responsibility to ensure the recantation is consistent with established facts. If the recantation conflicts with established facts, the investigator shall question the complainant in-depth and ensure the complainant is not being unduly influenced by other factors, such as fear of reprisal or intimidation. If it is determined that intimidation is a factor, the investigator shall immediately take appropriate action to stop the intimidation, and investigate this additional allegation.

Section 6

Writing the Report

The facts of your investigation are communicated through the written report. Your final report is the culmination of your investigation. A poorly investigated complaint cannot be rehabilitated by a well written report. Similarly, a poorly written report could invalidate the best investigation. Therefore, both your investigative skills and writing ability are equally important. This section will outline the complaint investigation format and give you tips on writing.

Formatting

Personnel complaint investigations are reported on pleading paper (paper that has numbers listed on the left side margin). This will allow the reader/adjudicator to pinpoint particular locations within the report by exact page and line number.

Fonts

Complaint investigations are written in Times New Roman (12 point) font.

Headings

Subsequent pages should have a header that includes the title and page number. If you place this as a Header by means of the word processor, you will save yourself the frustration of retyping page headings after you enter additional information. The header consists of three lines, which include the title, page number and reference number.

Complaint Investigation, CF No. 14-XXXX
Page 2
1.7.1

Sample header format

Margins

The margins of the report are one-inch all around for all pages.

Report Sections

Personnel complaint investigation reports are divided into six distinct sections separated by headings:

- Investigative responsibility
- Statute
- Background (if appropriate)
- Summary (includes allegations and statements)
- Investigator's Notes
- Addenda

It should be noted, however, that if an investigator needs to add an additional heading (i.e., timeline, standards of review, etc.), to make an investigation easier to read or better understandable for the adjudicator, he/she is not prohibited from doing so. Each report section and how they should be used is discussed below.

Investigative Responsibility

The investigative responsibility section provides the reader with the name of the investigating officer who was responsible for the investigation and a telephone number for contact. For investigations being investigated by Internal Affairs, the heading also informs the adjudicator that if any supplemental investigation is needed, it has to be requested via an Intradepartmental Correspondence, Form 15.2.

INVESTIGATIVE RESPONSIBILITY: The investigating officer (I/O) for this case is Sergeant II Edward Baker, Serial No. 17268, Criminal Investigation Division (CID) - Valley/West Section, Internal Affairs Group (IAG). Edward can be telephonically contacted at (818) 555-1212. Any requests for supplemental investigation must be approved by the commanding officer, CID, via an Intradepartmental Correspondence, Form 15.02.

Sample investigative responsibility section

Statute

Statute issues are critical and must be addressed so that the investigator, reviewer, and adjudicator is keenly aware of the statute date. The statute of limitations paragraph is necessary for each allegation, or set of allegations, specifying the date on which the allegation was brought to the attention of an uninvolved supervisor's attention and not necessarily when the Complaint Form was initiated. By placing the statute date in bold lettering, it informs the reviewer and adjudicator of the pending date in an easy to read format.

Statute Samples

STATUTE: This investigation involved administrative allegations only; therefore, the statute date remains as **August 30, 2014.**

STATUTE: After careful consideration, it was determined this case did not meet the Los Angeles County District Attorney's Office protocol for the referral of allegations of criminal misconduct. Thus, the statute date remains **August 30, 2014.**

STATUTE: On July 4, 2014, Sergeant II Edward Baker, Serial No. 17268, IAG, presented the investigation to the Los Angeles County District Attorney's Office, Justice System Integrity Division (JSID). As of August 30, 2014, there has been no resolution to the criminal case. The statute date has been tolled.

Sample statute section

Background (optional)

Some investigations require background information to assist the reader transition into the summary section of the investigation. This heading is optional and not required for all reports.

BACKGROUND: On August 1, 2013, Complainant Robert Allen wrote a letter to Mike Seal, Los Angeles County Board of Supervisors, alleging Police Officer II Scott Adams, Serial No. 13242, and Police Officer II Bo Jackson, Serial No. 13516, Pacific Patrol Division, struck him with their batons, causing visible injuries, which required hospitalization. On August 4, 2013, Seal forwarded Allen's letter to the Department (Addendum 1).

Sample background section

Summary

The summary section provides the reader with a chronological order of record, which lead the reader to the first and subsequent allegations, along with the responses to allegations from the complainant, witness and accused officer. It is important to identify the perspective from which the summary is written. Generally, the preferred perspective uses facts not in dispute, which are supported by references to documents or other facts included in the addenda. Occasionally, a summary cannot be written from a neutral perspective. The solution is to choose a perspective and clearly identify it for the reader.

Allegations and Indented Responses

Allegations are addressed in the summary section of the report. Each allegation is listed in chronological order in the summary. Statements should be divided into the parts which are relevant to each allegation. The headings are simply numbered according to the numbers the investigator assigned to each allegation in the summary section (e.g., ALLEGATION 1, ALLEGATION 2, etc.).

Allegations that occurred at the same place and time may be stacked together and addressed concurrently in subsequent interviews.

SUMMARY: According to Complainant Joe Benes, on June 1, 2014, she was standing in her front yard, located at 123 West Elm Street, Los Angeles, with her cousin, Jane Doe, when a black and white police car passed by her house.

ALLEGATION 1. Complainant Benes alleged that on June 1, 2014, unknown officer, while on duty, called her a "bitch".

ALLEGATION 2. Complainant Benes alleged that on June 1, 2014, unknown officer, while on duty, displayed his middle finger in a derogatory manner.

Sample summary section with allegations

Include all allegation headings before every interview statement. When a subject has no connection to a particular allegation, explain briefly that the subject was not present or had no pertinent information. Include any denials or recantations under each applicable allegation heading. When a complainant recants, be sure to include the reason.

To assist the investigator with the framing of allegations, and ensure consistency in the framing of the allegations, a list of examples has been provided.

Click on the hyperlink below to see suggestions for the wording of allegations:

[Suggestions for the Wording of Allegations](#)

Indented responses are addressed after each allegation to optimize clarity by highlighting, for the adjudicator, the merits of each allegation. This is crucial in some of the more complicated or convoluted investigations. The indented responses are not based on the investigator's opinion, but from what the investigator learned as a result of the investigation. The indented responses should be listed in the following order:

- Complainant's perspective.
- Witness's perspective.
- Accused officer's perspective.

Note: If the report reads better by placing the accused officer's perspective first, the I/O is permitted to do so. What we are striving for is clarity, and the system provided in this guide provides the investigator with a starting point.

The investigation should begin with the complainant's interview and end with the interview of the accused. Thus, the investigation will flow from the complainant's perspective to the accused. The investigator has the discretion to order the interviews that fall between the complainant and the accused. When a witness tends to support one allegation but refutes another, use your discretion and place the interview in the position that best fits the flow of the investigation.

ALLEGATION 1. Complainant Benes alleged that on June 1, 2014, unknown officer, called her a "bitch."

Benes¹ was standing in her front yard, approximately 20 feet from the street, with a clear and unobstructed view, when a black and white vehicle, heading southbound, passed her residence. A Hispanic, male officer, seated, in the driver seat of the vehicle, yelled with a high pitch scream, "bitch." The vehicle continued southbound to an unknown location.

Doe² was standing next to Benes, approximately 20 feet from the street, with a clear and unobstructed view, when a police vehicle passed in a southerly direction. Doe could not see the officer driving the vehicle, but heard a male voice yell in a squeaky voice, "bitch." Since Doe did not live at the location, she assumed the officer was directing the comment toward Benes.

¹ Benes was interviewed by Sergeant Williams on August 3, 2014, Job No. 121212.

² Doe was interviewed by Sergeant Williams on August 5, 2014, and the interview was uploaded into CMS.

Sample Summary section with allegation and indented summaries

Additional allegations of misconduct would follow immediately from the previous allegations. When allegations are made regarding additional misconduct that occurred at a different date, time or place, take the reader to the next occurrence by means of a short transitional narrative.

Indented statements are summaries of the subject's recorded statement. Write the statements in third person (he, she, it, and they), past tense. Use quotes sparingly and only to directly quote a specific phrase that has particular significance to the investigation. Writing an accurate, objective statement, which captures the essence of the subject's statement, is the biggest challenge in writing the investigation. The process begins with a well-conducted interview.

Each indented statement starts with the person's last name, bolded, with a footnote to address the date of the interview, the I/O who conducted the interview and the Job number, SID media number, or other identification for later retrieval. If the interview was uploaded to CMS, no Job number should be noted but a statement regarding the recording being uploaded into CMS should be made. The identification of the recorded statement is crucial to the investigation, because it allows for later audits and reviews to be conducted, thereby ensuring transparency. The remainder of the indented summary provides the perspective of the person reporting, in a summarized format, for the allegation(s) listed only. Include all parts of a statement relevant to an allegation under the numbered allegation heading. The adjudicator should not have to depend on any other information from another part of a person's statement in order to evaluate a particular allegation. When information from a statement is pertinent to another allegation(s) separated by time or location, you will have to repeat the relevant information.

Benes¹ was standing in her front yard, approximately 20 feet from the street, with a clear and unobstructed view, when a black and white vehicle, heading southbound, passed her residence. A Hispanic, male officer, seated, in the driver seat of the vehicle, yelled with a high pitch scream, "bitch." The vehicle continued southbound from the location to an unknown direction.

Approximately two hours after filing her complaint with the Department, Benes was in her kitchen when she received a telephone call from an unknown person.

ALLEGATION 3. Complainant Benes alleged that on June 1, 2014, unknown officer, while on duty, telephoned her and stated, "You better drop your complaint or you're going to be sorry."

Sample transitional narrative with allegation

Investigator's Notes

Investigator's Notes are used to provide the reader with pertinent information. In addition to investigator's notes, investigators have the option of using indented notes and footnotes, which serve the same purpose and have equal weight in significance. Investigators have the discretion to decide whether to use an Investigator's Note, indented note or a footnote.

When using an Investigator's Note to supplement information in another section of the investigation, the investigator needs to reference the note in the applicable section with the corresponding note number. If the investigator references more than one note, he/she needs to list the corresponding numbers in sequential order. The numbering of footnotes and Investigator's Notes are separate and unrelated.

The complainant stated that the tenderness to his left rib cage, his sore thumb, and an abrasion on his forehead were all caused by a strike from Officer Jones baton (Investigator's Note 1).

The complainant stated that the tenderness to his left rib cage, his sore thumb, and an abrasion on his forehead were all caused by a strike from Officer Jones baton (Investigator's Notes 1-3).

Sample Investigator's Note reference

The investigator's notes section should look as follows:

INVESTIGATOR'S NOTES

1. Jones and Smith were assigned to Southwest Patrol Division at the time of this incident. Jones was subsequently transferred to North Hollywood Area.
2. Benes identified Jones from a Photo Display Folder as the officer who unreasonably pushed him. Benes identified Smith from a Photo Display Folder as Jones partner (Addenda 8-9).

Note: If a supplemental investigation becomes necessary after the first investigation is completed, the numbering will pick up from the last Investigator's Note number in the first investigation.

Indented Notes

Indented notes clarify information or provide the reader with information regarding some fact immediately preceding the indented note itself. Use indented notes when it is important for the information to be directly connected to the source, for example, when an allegation is added to the investigation. Indented notes begin one tab space to the right from the current margin.

Note: Only one indented note can be used at a time. For example, an investigator cannot use an indented note followed by another indented note in subsequent order. When further information is required, consider combining two notes or utilize an Investigator's Note.

Jones¹ denied the allegation and had no further information to provide than what was listed in the arrest report.

Note: The District Attorney's Office filed one count of possession of rock cocaine against Escalante, Case No. LA13246201. On February 14, 2014, in Van Nuys Municipal Court, Division 112, Escalante pled guilty to the charge under Proposition 36, which allowed him to be placed on three years formal probation in a rehabilitation program (Addendum 6).

Sample Indented Note

Footnotes

Footnotes are a shorter and simpler alternative to investigator's notes. By taking advantage of the word processor's capabilities, you will find footnotes easier to use and your report easier to edit. Footnotes are easier for the reader, too. Use footnotes for the same purposes as Investigator's Notes, keeping in mind the length of the notes. Footnotes that carry across several pages are impractical and instead should be referenced as an Investigator's Note.

The complainant stated that Officer Jones grabbed him from behind and placed a chokehold around his neck.¹

¹Officer Jones: 5'5", 150 lbs. Complainant: 6'0", 200 lbs.

Sample footnote

Unreferenced investigator's notes may be placed at the end of the Investigator's Notes page. Below is a list of uses for footnotes or Investigator's Notes.

- Explain discrepancies or changes in allegations appearing on the original Complaint Form and the completed investigation.
- Location and description of evidence seized and/or stored.
- The status of any criminal case.
- How the incident was resolved that day (e.g., citation issued, released at scene, etc.).
- In Use of Force or aggravated cases, the height and weight of officers and complainant.
- Why complainants, witnesses, and accused officers were not interviewed.
- Observations of injuries or lack of injuries by the investigator. Include the date/time the injuries were observed and the amount of elapsed time between the incident creating the injury and the time observed.
- Any reenactments performed.
- Additional searches for evidence, witnesses, etc.
- Sobriety and other SID test results.
- Investigating Officer's observations (e.g., weather, traffic, and lighting conditions, etc.)
- Reason for a delay in investigation.
- Explanation of missing addenda items pertinent to the investigation.
- Gang information of witnesses or complainant, if relevant.
- Prior complaints against employees by complainant, if relevant.
- Criminal record information of witnesses or complainant, if relevant.
- Foundation for photographs: dates, times, location, photographer, and a label of what is being depicted.
- Interpretations of evidence such as hand writing and photographs by subject matter experts.
- Foundation for medical treatment: date, time, treating physician, diagnosis (if any), prognosis (if any), expert opinion (if any).
- How and when Department employees were identified (e.g., photo display folder, description, or their own statements).
- Presentation of the case to City Attorney (CA) or District Attorney (DA) for filing consideration.

Addenda

The addenda section is the last section heading in the complaint investigation, and lists all referenced documents in your report. Addenda items should be numbered and listed in the order they are referenced in the report. Include only the documents which you referenced in your report as part of your addenda. Other documents not referenced, such as signed statements or computer printouts, should be retained in the Personnel Complaint Envelope. Keep the list of addenda items simple, but descriptive. An addenda list should have the following appearance:

CF No. 14-XXXX
Page 5
3.2

ADDENDA

- 1 A-D. Daily Field Activities Report, Smith and Jones, December 12, 2001.
2. Employee Advisement Form, Smith.
- 3pp 1-200. Transcript, Jones deposition, May 1, 2014.
4. Photograph of 123 S. Elm Street.

Sample Addenda list

Addenda references should be used whenever an investigator wants to alert the reader to a supporting document related to the investigation. Addenda may be referenced in the summary section as well as in footnotes and Investigator's Notes. The format for addenda references is similar to that of Investigator's Notes. The proper usage and labeling of addenda items are as follows:

- (Addenda 2-3) - Addenda is plural (more than one).
- (Addendum 4) - Addendum is singular (only a single referenced item).
- (Addendum 4C) – For multi-paged addenda, reference the specific page, if appropriate.
- (Addendum 4, p. 205) – If an addenda item already has a page number, such as a court transcript, you may refer to the page number of the transcript.

Officer Jones stated that he arrived at 0700 hours
(Addendum 1).

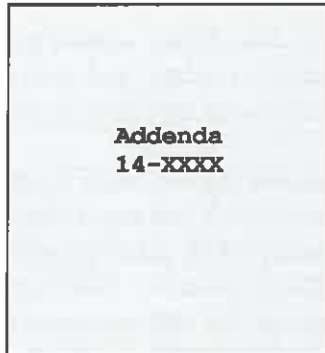
Officer Jones arrested the complainant for burglary
(Addenda 2-3).

Sample Addenda references

All your referenced addenda items should be assembled and numbered in order of reference in the report. Mark each page of an addenda item in its lower right corner with a sequential Arabic number in **red**. When the item is multi-paged, also sequence each page alphabetically. Do not try to number your addenda too soon because it will change often.

The addenda cover should be prepared for use with the assembled addenda items. Keep it simple: no pictures or fancy type. The addenda cover is NOT a page of the report.

Note: Place a copy of your final, assembled addenda in the Personnel Complaint Envelope in the event the original addenda are misplaced.



Addenda Cover

After the last addenda item appears, the investigator should skip five spaces and place their signature block as well as one for the supervisor approving the investigation. The signature blocks should appear together on the same page.

_____	Date: _____
Frank Jones, Sergeant Administrative South Section Internal Affairs Group	
APPROVED:	
_____	Date: _____
JOHN BENES, Lieutenant Officer-in-Charge, Administrative South Section Internal Affairs Group	

Sample signature blocks

The below listed hyperlinks will provide the investigator with three Examples of investigations.

[Complaint Investigation example one](#)
[Complaint Investigation example two](#)
[Complaint Investigation example three](#)

Section 7

Special Considerations

Workplace Investigations

The Department has a zero-tolerance policy against any type of discrimination. The Department's policy is based on federal and state laws, as well as City policies, prohibiting sexual harassment and other forms of discrimination.

Every employee of the City has the right to work in an environment that is free of discriminatory practices. It is essential that the Department maintain a healthy working environment which will provide all employees the opportunity to perform their duties to their fullest potential. The working environment must be free of sexual harassment to assure fair and courteous treatment of all employees. State and Federal laws, as well as Department policies, regulate employer and employee conduct, provide protections, and reassurance of equitable treatment.

Prevention through policy, training, supervision and discipline are ways to manage unlawful discrimination, harassment and retaliation. The Department and the City have several policies that clearly state and reinforce the principles of nondiscrimination.

Workplace investigations are specialized investigations, which generally will be investigated by specially trained investigators from IAG, assigned to the Workplace Investigation Section (WIS). However, there are specific terms and issues all supervisory personnel must be aware of. For guidance contact the WIS.

Generally, workplace investigations that become a complaint are handled by IAG due to complexity. As always, a strong initial intake will be critical for the commanding officer to determine if misconduct has occurred or if it is merely a workplace environment issue.

Defining Key Terms

Sexual Harassment

Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Hostile Work Environment

A hostile work environment occurs when an employee is subjected to unwelcomed conduct that a reasonable person would consider severe or pervasive as to interfere with their work performance. The conduct must be based on the employee's membership in one of the protected classes and must be sufficiently severe and pervasive to affect the terms and conditions of their employment.

Unlawful Discrimination

Any employment practice or decision which intentionally or unintentionally results in the unequal treatment of an individual or group based on their membership in one of the protected classes for other than job related (bona fide occupational qualification) reasons. The three primary types of unlawful discrimination are (1) disparate treatment, (2) adverse impact and (3) failure to provide reasonable accommodations.

Disparate Treatment

Disparate treatment is when an individual is treated differently than others on the basis of race, color, religion, national origin, gender, age, physical or mental disability, marital status, sexual orientation, creed, ancestry or medical condition.

Adverse Impact

Adverse impact is a personnel system or practice that appears neutral, but adversely affects individuals of a certain class or group on a disproportionate basis.

Failure to Provide Reasonable Accommodation

Lack of reasonable accommodation occurs when an employer does not make a reasonable modification to the workplace to allow equal employment opportunities for an individual with a known physical or mental limitation/disability.

Retaliation

Retaliation is an adverse employment action taken against an employee for engaging in a protected activity which includes an action that would cause a reasonable employee to be deterred from engaging in a protected activity (DM 1/272).

Retaliation is serious misconduct. As such all employees have a duty to report such behavior. Additionally, the Department has an obligation to stop the behavior. Any failure to do so can result in additional allegations (DM 3/813.10).

Protected Activities

Protected Activities include but are not limited the following:

- Opposing, reporting, or participating in any claim, lawsuit, or investigation concerning unlawful discrimination or sexual harassment.
- Filing a grievance or participating in any unfair labor complaint.
- Taking advantage of any labor right or benefit such as using sick or family leave.
- Seeking compensation for overtime worked.
- Filing an objectively valid work-related claim for damages or law suit.
- Reporting misconduct of another Department or City employee to the Office of the Inspector General, or any Department or government entity.
- Supporting, assisting or cooperating in a misconduct investigation.

Adverse Employment Action

Adverse employment actions may include, but are not limited to, the following:

- Negative performance evaluations.
- Negative employee comment cards.
- Notices to correct.
- The imposition of discipline.
- Denial of pay grade advancement, coveted assignment or promotional opportunity.
- Change of assignment.

Employee to Employee

Employee to Employee based retaliation may also include, but is not limited to the following:

- Refusing to provide or intentionally delaying response to a request for assistance or back up.
- Creating a dangerous working environment.
- Ostracizing employees for participating in an investigation.
- Spreading rumors impugning the character or reputation of a complainant or an accused.

Conducting the Investigation

Asking some preliminary questions may help distinguish between a case of sexual harassment, gender bias, some other type of discrimination, or no discrimination at all.

- Is the discrimination or harassment apparent through the accused employees' behavior? An attitude alone does not constitute the basis for discrimination or harassment.
- Is the behavior likely to be exhibited in a similar way toward a member of the other sex? If so, then it is probably not gender biased.
- Is the behavior unwelcome? To constitute sexual harassment, the behavior must be unwelcome; however, the offended party will not necessarily be the person to whom the behavior was directed.

For each allegation determine the following:

- What happened? What was said? What was done?
- Who was involved?
- Who was a witness?
- Where did this occur?
- Is there any evidence, written, recorded, or otherwise?
- Did this ever happen before?
- Why was it said or done?
- How did the involved person react? What was said?
- Did anyone report the act?
- Were any actions taken, and if so, by whom?

Related Issues

Some related issues that often accompany sexual harassment and discrimination complaints are:

- Relationships between Department Employees (DM 1/271).
- Retaliation (DM 1/272).
- Hazing and Initiation Activities (DM 1/275).
- Sexual Harassment (DM 1/280).
- Sexual Orientation Discrimination (DM 1/285).

Be on the lookout for these potential issues. Review the policies prior to conducting an investigation. This review will enable the investigator to recognize the accurate issues and ask the appropriate questions.

Scope of Investigation

Workplace investigations have the potential for becoming quite broad for two reasons: (1) often they involve Department employees who make cross-allegations against each other; and (2) investigations involving sexual harassment often lead to many more allegations of misconduct, often involving many more employees.

Pervasive discrimination can cripple an organization's ability to function. For that reason, address the broader environmental issues that lie on the surface of any workplace complaint. Stay focused on the point of the investigation. Some methods for examining these issues are listed below:

- Were any supervisors aware of the problem and condoned it by ignoring it?
- Did any employee fail to take action after being informed of the problem?
- Are any issues of backlash or retaliation evident?
- What training (sexual harassment, gender bias, etc.) has the accused and other employees received?
- Are or were there any visible signs of discrimination evident in the workplace?
- What actions have been taken to address any recent related incidents?

This list is NOT exhaustive of all the issues that may need to be addressed in a discrimination investigation; however, the more information provided to the adjudicator, the better for all persons involved, and the Department.

Below are hyperlinks to assist the investigator when conducting workplace investigations.

[**Special Order 15 \(2005\) – Retaliation Prohibited Acts**](#)

[**Special Order 16 \(2005\) – Policy Prohibiting Retaliation**](#)

[**Anti-Discrimination and Retaliation**](#)

Biased Policing Investigations

Biased policing is an issue that is of major concern to the community and the Department. Biased based policing policy arises from, at its core, protections guaranteed by both the Fourth and Fourteenth Amendments to the United States Constitution.

The Fourth Amendment protects people on United States soil from search and seizures by the government without first meeting the reasonable suspicion legal standard and or examination by an independent third party, a judge. The Fourteenth Amendment reads, “no state, or their representatives, may deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws”.

Biased Policing is defined as law enforcement activities motivated by race, color, ethnicity, national origin, gender, gender identity, gender expression, sexual orientation, or disability. Police-initiated stops, or detentions and activities following stops or detentions, shall be based on legitimate, articulable facts, consistent with the standards of reasonable suspicion or probable standards as required by federal and state laws. Department personnel may consider any of the above listed protected classes, only in combination with other appropriate identifying factors, as necessary to identify a particular person or group involved in criminal behavior (DM 1/345).

Investigative Review Procedure

Per Department Policy, Biased based policing investigations will be conducted by IAG personnel. However, as in all cases, a good preliminary investigation done is the best hope for definitively resolving allegations, as emphasized in LDRS.

All completed personnel complaint investigations containing an allegation of biased policing undergo an extensive review process; the Section OIC, the CO, Criminal Investigation Division (CID) or the CO, Administrative Investigative Division (AID), Review and Evaluation Section, and finally the CO, IAG.

Case Preparation

Investigators need to gather and review all documents related to the incident, including but not limited to DFARs, FIs, Sergeant’s Daily Report, arrest reports, traffic citations, and any audio/video recordings or in-car camera recordings of the incident. If applicable and/or feasible, determine the final outcome of any related traffic citation or legal proceeding, which the complainant alleged was a result of biased policing. If the complainant alleged the officer selectively enforced the law by allowing persons of other ethnicities or gender to avoid similar enforcement, you should examine enforcement activities for the day around the

time of incident. This needs to be documented in the Investigator's Note Section. Obtain photographic and visual documentation such as tinting of vehicles, diagrams of locations, etc. Canvass the location and interview all witnesses.

Generally, all complainants should be interviewed. However, in some instances, letters or other correspondence may provide specific enough information to not require an interview. Consideration should be given to sufficient specificity in correspondence, ability to interview the complainants, length of time from the incident to the date of correspondence, and other existing reviews such as court proceedings, etc. The decision to not interview complainants shall be approved by your OIC and documented in an Investigator's Note.

All accused officers should be interviewed. However, in some unusual instances, accused officers may not need to be interviewed when there is overwhelming probable cause or video evidence which strongly refutes the allegation. The decision to not interview accused officers shall be approved by your OIC, and documented in an Investigator's Note.

Complainant Questions

Below is a list of questions, which should be addressed with all complainants. Ideally these questions should have been asked and answered during the Intake, however if not then do so now. These questions are just a starting point, and all investigators will need to ask the pertinent questions as they become apparent in the investigation. Probe for specific articulation.

- Why does complainant believe he/she was the subject of biased policing?
- What behaviors on the part of the officer(s) does the complainant believe support his/her allegation of biased policing?
- What were the actions of the officer(s) at scene?
- Could the officer have seen the complainant's race or other factor for bias prior to the stop?
- What was the officer(s) direction of approach?
- Was the complainant searched? Was the location searched? If so, what was the type and scope of search conducted?
- What was the length of detention?
- Was the complainant or other passengers handcuffed? (photo wrists)
- Was the complainant's vehicle window tinted (if driving)? If so, what was the window position at time of stop? (Obtain photo of windows.)
- What is the complainant's definition or understanding of biased policing?
- Were any other statements made by the officer(s) that indicate bias?
- Did the officer provide an explanation for the detention or stop?

For a full list of questions, click on the hyperlink below.

[**Questions for Complainants**](#)

Accused Officer Questions

- What was the reason for the stop, search or detention?
- Obtain details specific to conclusionary statements such as, “officer safety,” “uncooperative,” “high crime area” or “consensual encounter.” Draw out articulation as necessary.
- Location of officer when they first saw the complainant?
- Did officer(s) know the race or other factor of bias of subject prior to the stop or detention?
- Was race or bias a factor in the stop or detention? If the answer is “yes,” have the officer(s) explain.
- If a search was associated with the stop or detention, ask the officer(s) to articulate the reason(s), scope, type and intent of the search.
- Lighting conditions, distance when the officer(s) made the observations?
- Were the windows tinted? If so, what was the position of the window(s) at the time of initial observation (rolled up/down)?

For a full list of questions, click on the hyperlinks below.

[Questions for Accused Officers](#)

[Biased Policing Checklist](#)

[Biased Policing Strategies and Standards of Review](#)

[LDRS](#)

Alternative Complaint Resolution (ACR)

The Alternative Complaint Resolution (ACR) is a method of facilitating disputes between Department employees and members of the public. The ACR has been proven in the private sector and within the court of law as a successful tool in resolving minor disputes. Facilitation usually brings about a quicker resolution for both the Department employee(s) and members of the public. Consequently, it is more efficient and less expensive to administer, as it does not require a lengthy investigation. The ACR consists of facilitating a resolution of a complaint between two parties through a face-to-face meeting. A Department supervisor serves as a facilitator to foster communication between the parties and assist them in reaching a voluntary agreement regarding their dispute.

ACR Process

A Non-Disciplinary or Disciplinary complaint may be designated for the ACR process when all of the following criteria are met:

- The complaint of the alleged misconduct is Non-Disciplinary or Disciplinary, but minor in nature (e.g., discourtesy, disrespect, or a minor Neglect of Duty, etc.) as alleged by the public;
- The employee has no apparent pattern of similar behavior (should generally be limited to the past five years) for which he/she is accused;
- The complainant and the employee have agreed to participate in good faith.

Generally, the watch commander, section OIC or civilian equivalent, shall appoint a supervisor to serve as the ACR facilitator. However, nothing precludes a supervisor who is responding to a complaint in the field from utilizing ACR at the time the complaint is made, with concurrence from the watch commander, section OIC, or civilian equivalent.

Sometimes conflict can be better resolved between a public member and an employee by use of conciliation instead of a face-to-face meeting. In limited cases, supervisors may act as a go-between for the complainant and the employee.

Note: Prior to conducting ACR, assigned facilitators should refer to the ACR manual.

General Guidelines

When a complainant and/or accused employee indicates a desire for ACR, the process should generally be completed. In the event ACR is delayed more than 30 calendar days from the date reported to an uninvolved supervisor, absent exigent circumstances, the complaint shall be returned to the commanding officer for appropriate disposition. Prior to ACR, the complainant shall sign an ACR Acknowledgement, Form 01.28.06. A single ACR session should be sufficient, and all ACR discussions shall be considered confidential.

The presence of outside parties is discouraged; however, the assigned facilitator may exercise discretion in establishing parameters for the ACR session. Accused employees may not have an employee representative present, nor may a complainant have legal counsel. Sessions shall not be audio/video recorded. The assigned facilitator shall have the final authority over the ACR session.

Note: When the accused employee insists on the presence of an employee representative during ACR, or the complainant requests legal counsel, complaints shall be returned to the commanding officer for appropriate disposition.

Role of Facilitator

The process of resolving conflict requires all parties to be forthright and willing to accept responsibility. In fact, a full and complete discussion of events may include an admission to the complained of behavior. It is understood that this is part of the resolution process and confidentiality will be maintained. However, should a significant act of misconduct come to light, the ACR session shall be stopped and the complaint referred for appropriate disposition.

Withdrawal from ACR

If, prior to completing the ACR session, either the complainant or the accused employee chooses to withdraw, the complaint shall be referred to the accused employee's commanding officer for appropriate disposition. Likewise, an assigned facilitator may stop the ACR process and refer the case to the commanding officer for appropriate disposition if one or both parties involved are not participating in good faith.

In any of these cases, the complainant and employee shall be advised of the investigation's outcome via established complaint procedures. No prejudice shall be inferred upon either party for withdrawing from ACR.

If at any time after the ACR session is adjourned, the complainant wants to renew the complaint or adds new allegations of misconduct, no new complaint shall be initiated. The resolution by ACR shall be final, and no further action relative to the incident may be initiated after the completion of ACR.

Commanding Officer's Review

If, based on compelling circumstances, a commanding officer determines ACR is not appropriate (due to either the nature of the complaint or the employee's work history), that commanding officer may override a watch commander's decision, even if ACR has already occurred. If this occurs, the commanding officer shall provide the employee with a written rationale, providing his/her justification for doing so.

For the complete copy of the ACR Guide and ACR Acknowledgment Form, click on the hyperlinks below.

[**Alternate Complaint Resolution Guide**](#)

[**Alternative Complaint Resolution Acknowledgement \(Waiver\) Form**](#)

Employees Arrested on Suspicion of Criminal Acts

When an employee is detained or arrested, and without option, transported to a jail or police facility for any offense committed outside of the City, the investigator may be tasked to respond to the outside agency for the purpose of conducting a preliminary investigation.

Preliminary Investigation

The duties of the preliminary investigator are outlined in DM 3/837.30:

- Advise the concerned members of the outside agency that the investigation is for internal, administrative purposes only;
- The investigating officer shall determine when employees should be advised of their Miranda rights and shall have the responsibility of either giving the Miranda Admonition or ensuring that it is given;
- When chemical testing of sobriety is necessary, *one* test shall be administered. If the test is a Gas Chromatograph Intoximeter (GCI), one test shall consist of at least two samples (DM 4/343.38);
- Do not re-administer a test if the outside agency has already done so. Their test should be used for the administrative investigation; and,
- The investigation shall be reported to the employee's commanding officer on a Complaint Form, and forwarded to the Commanding Officer, Internal Affairs Group, through normal distribution.

The outside agency may not elect to administer sobriety tests when sobriety is not an element of the crime for which the employee was arrested, for example, spousal battery. Under those circumstances, decide, with the guidance of a commanding officer, whether administering a sobriety test is reasonable and necessary. Sobriety can become a factor for penalty.

Confidentiality

Any evidence obtained solely as a result of the personnel investigation is confidential and should NOT be disclosed to members of the outside agency conducting the criminal investigation or any other unauthorized persons.

Employee's Duty to Report

When an employee is detained or arrested, or who has knowledge he/she was named as a principle on a crime report or complaint filed with any police agency regarding an offense committed outside the City, the following notifications should be made by both the involved employee and any other employee who has knowledge of such involvement by a Department employee (DM 837.10):

- Advise the detaining/arresting officer of his/her Department employee status.
- Notify the watch commander from his/her Area/Division of assignment without delay, or the Department Command Post when the employees' location of assignment is closed (The Department Command Post shall notify the on-call IAG investigating officer).

Employee Named in a Crime Report

In addition to notification requirements of detentions, arrests, or when named as a principle in a written crime report or complaint for any offense excluding traffic infractions as outlined in Manual Sections 3/837.10 and 3/838.20, a sworn Department employee shall notify his/her commanding officer immediately, either directly or through a supervisor of Professional Standards Bureau (PSB), if they are charged with a criminal offense by a prosecutor or a grand jury indictment.

Exculpatory Information

Information that tends to prove the innocence of an accused is called *exculpatory* information. Information that tends to prove the accused guilty is called *inculpatory* information. Investigators are obligated to disclose all relevant information developed during an investigation, whether it tends to prove or disprove the employee's involvement.

For example, an examination for latent prints failed to identify the accused employee. In this example, the investigator should indicate on the Chronological Record that the latent print examination was conducted with an explanation of the results. Similarly, the information should be noted as an Investigator's Note in the investigation.

While the absence of latent prints neither proves nor disproves that the employee handled the object, it is nonetheless proper that the analysis and its results were included in the investigation. From the defense's perspective, the results of the analysis may corroborate a defense theory. The omission of the analysis from the investigation could be used to show a willful attempt by the investigator to conceal exculpatory information.

Criminal Filing Review

The Commanding Officer, Criminal Investigation Division, IAG, coordinates the tracking of all criminal filing considerations submitted to the local prosecutors, felony and misdemeanor.

Searches of Employees

Department Employee

There are two types of employee searches: searches incidental to an arrest and administrative searches.

Incidental to Arrest

Department employees who are arrested by another member of the Department will be searched in accordance with the same procedures followed in any other arrest. No command approval is necessary prior to a search incidental to an arrest; however, an employees' arrest will necessitate special notifications and actions (DM 3/837).

Administrative Personal Search Criteria

Supervisors may conduct a voluntary clothing search of Department employees when the following conditions exist:

- There is an allegation of misconduct involving the possibility of criminal activity made against the Department employee.
- There is no less intrusive way of ascertaining the existence or nonexistence of the evidence.
- The employee requests to be searched.

Pat-down Search

A pat-down search is defined as a physical search of the employee and the clothing being worn. Such a search does **NOT** include any visual inspection of underclothing or the immediate area of the breasts, buttocks, or groin by means of arranging or removing clothing.

Voluntary Clothing Search Requirements

Supervisors may conduct a voluntary clothing search of Department employees when the following conditions exists (DM 839.21):

- There is an allegation of misconduct involving the possibility of criminal activity made against the Department employee.
- There is no less intrusive way of ascertaining the existence or nonexistence of the evidence.
- The employee requests to be searched.

Strip and Involuntary Clothing Search Requirements

Employees shall not be required to submit to a strip or involuntary clothing search unless all of the following conditions exist (DM 3/839.22):

- There is an allegation of misconduct involving the possibility of criminal activity made against the Department employee.
- Reasonable suspicion exists to believe that the employee secreted evidence of that allegation on his or her person.
- There is no less intrusive way of ascertaining the existence or nonexistence of the evidence.
- Approval for the search has been obtained from a staff officer of the rank of commander or above from within the employee's chain-of-command.
- A captain or civilian commanding officer from the involved employee's Division or Area of assignment has responded to the scene to supervise the search. When a captain or civilian commanding officer from the division or Area is unavailable, a staff officer in the employee's chain-of-command shall respond to the scene.

Note: A "reasonable suspicion" exists when the person responsible for the search is aware of specific articulable facts, and inferences from these facts, which reasonably warrant a suspicion that evidence will be uncovered.

Exceptions:

- In organizational entities which are not headed by either a civilian commanding officer or a captain, any staff officer in that entity may respond.
- An available staff officer (commander or above) may grant permission to conduct strip and involuntary clothing searches when a staff officer from the employees' chain-of-command is unavailable.
- In situations involving an investigation conducted by IAG, the presence of a captain from that Division will suffice in lieu of the involved employees' captain or civilian commanding officer.

Body-Cavity Search

A body-cavity search is defined as a search of the employee's body cavity by a medically qualified person. Such searches will be authorized only after an arrest **AND** when legally permissible.

Supervisor's Responsibilities

When an allegation of misconduct necessitates a strip or involuntary clothing search, the supervisor shall (DM 3/839.30):

- Explain the specific allegation(s) to the employee;
- Contact the employee's commanding officer and be guided by the appropriate instructions; and,
- If the employee requests a representative, allow the employee up to two hours for the representative to be present at the search location. If the representative cannot reach the search location within two hours, the employee may consult with the representative telephonically. The employee shall be kept under observation at all times until the search is completed.

All searches in conjunction with administrative investigations of Department employees shall be conducted out of the view of the public and other employees, and the employee conducting the search shall be the same sex as the employee being searched.

Note: Government Code Section 3303 states if your search includes an interrogation of the employee, the employee will have the right to a representative being present, if requested. If no interrogation is conducted, refer to the search as a "contact" rather than an "interview" or "interrogation."

Commanding Officer's Responsibilities

When the request to conduct a personal search of an employee is made, the commanding officer shall (DM 3/839.35):

- Contact a staff officer within the employee's chain of command and request authorization for the search.
- Ensure a captain within the accused employee's chain of command responds to the search location to supervise the search.

Upon being notified of a request for a strip or involuntary clothing search, the employee's commanding officer or the Internal Affairs Group (IAG) captain shall evaluate the need for the search. If the search is determined to be appropriate, the commanding officer or an IAG captain shall contact a staff officer (commander or above) within the employee's chain of command to obtain approval for conducting the search and ensure that a captain or above, a civilian commanding officer from within the chain of command, or an IAG captain has responded to the scene to supervise the search.

If a staff officer (commander or above) or a civilian commanding officer from the employee's chain of command is unavailable, the Watch Commander, Detective Support and Vice Division, shall be contacted for the availability of a staff officer (commander or above).

Staff Officer's Responsibility

When notified of an incident in which the strip or involuntary clothing search of a Department employee is warranted, the staff officer (commander or above) shall review the need for the search. If the search is deemed necessary and reasonable, the staff officer (commander or above) shall direct the appropriate supervisory personnel to order the employee to submit to the search (DM 3/839.40).

Refusal by the involved employee to submit to an involuntary search after being ordered to do so constitutes insubordination for which the employee may be disciplined.

Searches of Department-Owned Storage Spaces

The courts have upheld a public agency's ability to conduct administrative searches of agency-owned locker or other storage spaces assigned to the employee. Storage space includes desks and file cabinets. However, GC Section 3309 qualified the search parameters. Department-owned storage spaces may be searched only:

- With the consent of the employee to whom the storage space is assigned.
- With a valid search warrant.
- In the presence of the employee or after the employee has been given reasonable notice that the search will be conducted.

Desks may also be searched for non-investigative reasons, for example, to find a report when an employee is on a day off. Make sure the intent was clear and is articulated in reports, so there is no appearance of a manufactured pretext (*O'Connor v. Ortega*).

Search Warrants

It is good practice to get a search warrant whenever there is probable cause of criminal activity. It is often difficult to support a search on the pretext of a criminal investigation when no search warrant is sought. Don't lose evidence due to a court ruling that it was obtained illegally.

Closed Containers

Once in the locker (or desk), any privately owned closed container, such as a briefcase, is off limits to open, absent a search warrant or consent. Many officers have small drawer sets in their lockers. Do not open the drawers without consent or a search warrant.

Delaying a Search

Every situation is unique. Exigent circumstances, such as a K-9 alerting to explosives in a locker, may require an immediate search, without waiting for the employee to arrive; whereas, the officer's request to be present within 30 minutes may be reasonable if the search was for sexually explicit material. Weigh the totality of the circumstances with consideration to fairness and reason. When an employee requests that a representative be present, follow the two-hour guideline, if the circumstances reasonably permit.

Below is a hyperlink for the Consent to Search Form.

[Consent to Search Form](#)

Computer / Electronic Devices Related Investigations

Since the onset of the 21st Century, computer related crimes have increased significantly. Unfortunately, police officers are not immune to becoming involved in these types of crimes. Therefore, investigators need to have a basic understanding as to how to investigate these types of misconduct.

Internet Crime

There have been reported cases of officers committing a variety of crimes via the computer or internet:

- Child pornography.
- Child enticement.
- Fraud (various types).
- Identity Theft/ Impersonation.
- Terrorist/Criminal Threats.
- Sexual Harassment/Retaliation/Discrimination/Hostile Work Environment.

It is against Department policy to use computers connected to the Department LAN for non-business related access to Internet sites, to listen to music, audio material, or to watch video clips.

Standards of Review

Listed below are some of the laws governing the use of computers:

- Federal Electronic Communications Privacy Act (FECPA) 18 United States Code 2510
- Identity Theft: California Penal Code, Section 530.5
- Annoying/threatening communications: California Penal Code, Section 635(m)
- Child Pornography: California PC Section 311
- Computer Data Access and Fraud Act: California PC Section 502
- Searching cellular phones incident to arrest: California v. Diaz, 2011

Social Networking Issues

Social Media websites such as Facebook, Pinterest, Instagram and Twitter have over a billion users worldwide. It is correctly believed that these sites are personal and have some First Amendment protections in the United States. These protections are from certain types of government intrusion or search. Generally, a search warrant is required since protections are in place.

However, today's "friends, girlfriends, boyfriends, husbands, wives" do not always remain so forever. These individuals have captured the information contained on these sites and brought them to the Departments' attention. Any conduct which may tend to reflect unfavorably upon the employee or the Department is unbecoming conduct. This may also apply to information revealed during "blogging."

Additionally, defense attorneys have gained access to these sites and successfully used them against officers in court as impeachment material. Convictions rest on the credibility of the officer(s). *Brady v. Maryland (1963)* states evidence affecting the credibility of the police officer as a witness may be used as exculpatory evidence and shall be given to the defense. Brady issues affect the officers' future ability to testify in court and will therefore impact his/her ability to complete some essential duties.

Case Strategy

The goal is to gather all evidence that proves or disproves the allegation. The more difficult issue associated with this type of investigation is that there are usually few witnesses to the acts. The benefit of this type of investigation is that there is more technological evidence. While investigating a computer related crime, investigators should consider the following:

- Use Department experts and resources, such as Commercial Crimes Division, Computer Crimes Unit, Juvenile Division, Cyber Unit, Criminal Investigation Division, and/or Scientific Investigation Division.
- Record all results of seizures of computer hard drives, memory, files, photographs, and site content.
- Request Information Technology Division (ITD) to conduct checks and results.

Search Warrants

Most internet companies will require a warrant prior to releasing information regarding a client/user. A judge will require prima fascia (evidence) for a crime where the internet or electronic device is a factor prior to issuing a warrant. Generally, there is no issue when conducting criminal investigations. Cellular phones are considered electronic devices under the current definitions of the law. It is illegal to knowingly access without permission or authority, any electronic device data, electronic device system or electronic device network in order to wrongfully control or obtain property, software, or data. However, the same case authorized law enforcement officers to conduct a warrantless search of the contents of a cellular phone incident to arrest, as long as the cellular phone is in the arrestee's immediate control (See California Penal Code, Section 502 and *California v. Diaz*).

Ask accused officers for consent to search their electronic device on administrative investigations to resolve the allegations. Document their responses. Investigators do not have the right to order an officer to comply with this request.

Administrative Searches

Administrative investigations generally will not be able to access electronic devices or websites without consent. All Department owned equipment are subject to the same search requirements listed in the *Search of Department Owned Storage Spaces* section. All Internet access activity is logged by ITD and is made available for audits and investigations. Requests for computer information searches are made to ITD via Interdepartmental Correspondence Form 15.2. This search can determine which computers were accessed with a given password. This search can also determine which sites were accessed and for how long.

Accused officers should not be notified of any requests for information from ITD. Accused officers may be confronted with the results of the search during the interview as necessary. The use of Department intranet e-mail is restricted to official Department business. The Department has the right to access all e-mail files created, received, or stored on Department systems, and such files can be accessed without prior notification. All requests for this search are made to ITD via the above mentioned procedure (DM 3/788.40).

Questions for the Complainant/Investigator

Below is a list of partial questions an investigator should ponder before speaking to a complainant:

- How did the act come to the Department's attention?
- What is the nexus to the Department, if any?
- Who committed the act?
- Whose Identity was used?
- What is the IP address, e-mail, screen name, password, ect. involved?
- What site was used?
- What exactly was done?
- How was the act done?
- To whom was it done?
- When did it occur?
- Why was it done?
- Has the behavior occurred before?
- How long have the incidents been occurring?
- When and where was it done?
- What exactly was written?

Domestic Violence Investigations

As Department employees, we are keenly aware of the prevalence of domestic violence related incidents. Officers know from experience such calls are among the most dangerous and unpredictable. In recent years, laws were enacted to stem the tide of domestic violence and to break the cycle of violence, which is common to chronic domestic violence patterns. The legislative changes, public awareness, and education have succeeded in raising the public moral conscience to a level in which domestic violence is no longer tolerated. While police officers are trained to deal with domestic violence in the field, they are not immune from facing it in their personal lives. They can find themselves as either a victim or aggressor.

Zero Tolerance

Just as the law requires officers to enforce the law in domestic violence incidents, the Department has an obligation to ensure that employees who are involved in domestic violence incidents receive the same treatment as any other member of the public, including intervention, assistance, and arrest, when the law requires it. No employee should receive any preferential treatment by virtue of his/her employment with the Department. If the law requires an arrest, the employee shall be arrested.

When an incident occurs within the City, booking approval should follow the procedures outlined in DM 3/837.50. While not every domestic incident mandates an arrest, a thorough investigation is always necessary in order to avert the appearance of a double standard and protect the public trust.

Outside Jurisdictions

In the majority of cases, domestic incidents involving employees occur outside the City limits where most officers reside. In such cases, the local law enforcement agency will have jurisdiction for investigating any criminal violations. Your task will be to conduct the administrative investigation. To the extent that evidence, interviews, photographs, and medical examinations have been collected or conducted by the outside agency, you should avoid duplicating these steps as long as the outside agency is willing to share the information. If the outside agency's investigation omitted a procedure that you feel is necessary for the administrative investigation, or if they failed to conduct a thorough investigation, you should proceed cautiously to obtain the information without jeopardizing the criminal investigation.

Provide Assistance

Police officers are tasked to provide assistance to victims and families involved in domestic violence. As the Department's representative, you must assume this role. Remember, the victim may be apprehensive about accepting help from a

member of the aggressor's own Department; therefore, you must remain objective and nonjudgmental. Indeed, victims may also be Department employees.

Verify that the victim has been informed and/or provided the following, especially as it relates to criminal investigations within the City and mandated by state law:

- Medical Attention, if needed.
- Safe passage out of the residence.
- Transportation to a shelter, if desired.
- Right to Confidentiality- 6254 (f) GC.
- Emergency Protective Orders / Temporary Restraining Orders.
 - As of January 1, 2013, prior to serving a restraining order, law enforcement shall conduct a query for weapons registered to the served party in order to identify all weapons that must be surrendered.
- Victim's Information Notification Everyday (VINE) Pamphlet (LAPD Forms 15.42).
 - This includes information related to criminal proceedings and those items required by state law.
 - Safety.
 - VINE system, so victims may be notified of suspect's release from jail.
 - Information on Restraining Orders.
 - Hotline/Shelter/Referral information.
 - Sexual Assault Information and Resources.
- Marsy's Rights Card (LAPD Forms).

Weapons

The presence or potential for use of a firearm is much greater in domestic incidents involving police officers. Your preliminary investigation should carefully consider the need to take appropriate action regarding officers' weapons.

Consider the following:

- Was a firearm or any weapon used or involved in the incident?
- Has the employee threatened physical harm against anyone, including him/herself?
- Did a physical assault occur?
- Is the employee under the care of a doctor, psychiatrist, or psychologist?
- Have any domestic violence restraining orders been served against the employee?
- Does the employee have possession or access to any Department issued firearms? Are they accounted for?
- Does the employee possess any additional firearms?
- Was a Department issued firearm seized as a result of this incident?
- Is the employee intoxicated or under the influence of any drugs?

Appropriate action includes:

- Booking the weapons used in the crime as evidence.
- Consideration of seizing the employee's Department-issued duty weapon(s), ammunition, and magazines and relinquishing these items to his/her Commanding Officer.
- Consideration of booking personal weapon(s), ammunition, magazines, and other deadly weapons into property for safe keeping.
- Consideration of immediate relief from duty.

The criteria and procedures for such actions are outlined in PC Sections 18250 and 16490, Family Code Sections 6203 and 6320, and DM Sections 1/210.38, 3/838.20, 3/838.23, 3/838.40, 3/840.30, 4/216.03, 4/216.07, 4/560.35, OCOP Notice, dated May 7, 2008, and Special Order No. 16, dated November 6, 1996.

Penal Code Section 18250 states peace officers (you) at the scene of a domestic violence incident involving a threat to human life or a physical assault, or a peace officer serving a protective order as defined in Family Code Section 6218 (including Emergency Protective Orders and Temporary Restraining Orders):

SHALL take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search or other lawful search (Penal Code Section 1524 (11)-Search Warrants) as necessary for the protection of the peace officer or other persons present.

In addition, weapons shall also be seized from a suspect who not only engages in violence or threats, but also is involved in specific conduct which includes abuse as defined in Family Code Section 6203 and 6320, including sexual assault, molestation, attack, strike, stalk, destroy personal property, or violate a DV court order in cases involving relationships covered under PC 13700 and the additional following parties under PC 16490:

- A child who is the subject of a paternity action and persons related through consanguinity or affinity within second degree, i.e., parents, children, siblings, grandparents, grandchildren, in laws, and step relations.

When circumstances exist that meet the criteria for seizing weapons, you shall follow the law (Penal Code Sections 18250 and 16490) without regard to the suspect's status as a Department employee.

Recognizing Domestic Violence

Domestic violence is defined by **Penal Code Section 13700** as follows:

Abuse...

Note: Abuse is defined as intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another.

...committed against an adult or a fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. For purposes of this subdivision, "cohabitant" means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.

As you begin to investigate the incident, ask yourself these questions:

- Is this a domestic violence incident?
- What is the relationship between the complainant and the employee?
- Who is the dominant aggressor?
- What crimes, if any, have been committed?

Some commonly used Penal Code Sections related to Domestic Violence:

- **273. 5- Spousal or Cohabitant Abuse- Felony**
- Any person who willfully inflicts corporal injury resulting in a "traumatic condition" upon his/her spouse, former spouse, cohabitant, former cohabitant, child in common.
- Effective January 1, 2012, this section was amended to specifically include strangulation and suffocation in its definition of traumatic condition, whether of a minor or serious nature.
- On January 1, 2014, a new law passed, which incorporated dating, former dating, engagement, and former engagement relationships into this felony section.
- **243(e)(1)- Battery-Domestic Violence- Misdemeanor**
- **422- Criminal Threats- Felony**
- **646.9(a)- Stalking-Misdemeanor/ 646.9(b)- Stalking-Felony**

Dominant Aggressor

One of the most important goals of your investigation, especially in the preliminary stage, should be to establish the dominant aggressor. It is neither a crime nor domestic violence to defend one's self. Penal Code Section 13701 defines the dominant aggressor as the most significant aggressor, rather than the first aggressor and requires officers at scene to make reasonable efforts to determine the dominant aggressor.

Operations Order No. 4, dated May 20, 2004, directs officers to make every effort possible to determine the dominant aggressor.

When at the scene of a domestic violence investigation and officers have probable cause to believe that a felony or misdemeanor crime has occurred, the dominant aggressor **shall** be arrested for the applicable charge.

Reports

Penal Code Section 13730 mandates that all Domestic Violence investigations include the following information documented in the written reports:

- Was the alleged abuser under the influence of drugs or alcohol? Did the officer observe any objective symptoms of such use?
- Are there prior incidents of domestic violence and/or police response(s) or restraining orders?
- Were weapons used and/or present at the scene of a domestic violence? If so, such weapons should be booked as evidence or seized under PC Section 18250.

Officers shall also complete a Domestic Violence Supplemental Report in conjunction with any Investigative Report or Combined Crime and Arrest report completed.

Interview Considerations

VICTIM – Determine:

- The nature and length of relationship, children in common, etc.
- Historical issues and patterns in the relationship (use power and control wheel).
- Details related to the abuse, including dates, times, and circumstances and situation leading up to the incident. Also obtain details of the following:
 - First Incident
 - Last Incident
 - Worst Incident
- Determine the victims visible injuries and complained of injuries hurts.
- How long the abuse has been occurring.
- With whom the victim has discussed the abuse; establish fresh complaint witnesses.

- When the last incident, prior to the one being investigated, occurred.
- If there's abuse to others in the home (children, elders, pets).
- What the abuser does to frighten the victim.
- How the suspect will explain this incident and the abuse and/or injuries.
- Existence of a diary or journal.

It is common for domestic violence victims to want to recant the allegations after making a complaint. However, the nature of domestic violence makes it imperative that the investigation continue. When a complainant chooses to recant, take the statement and ask for a detailed explanation. Include it in the statement and allow the adjudicator to weigh the facts.

When both the victim and suspect are members of the Department, issues may appear cloudy. Victims of domestic have the right to obtain protection from their abusers and police services. These victims may be especially weary of calling for help due to the possible ramifications related to their employment. Domestic Violence laws should be followed and adhered to.

CHILDREN – Determine:

- What the child has seen his/her parents do.
- If the child is fearful and why.
- If the child has seen or heard his/her parents fight.
- What specifically the child heard.
- If the child has ever been hurt or experienced any type of abuse or neglect.
- If the child has ever seen anyone else in his family hurt or with injuries, including pets.
- If the child or anyone else in the family has gone to the Hospital/Emergency Room for an injury.
- If the child has told anyone else about Domestic Violence or Abuse.
- If anyone told the child what to say during the interview.

Note: Generally, interview the child alone.

RESPONDING LAW ENFORCEMENT OFFICERS – Determine:

- If the officers heard or saw anything upon their approach or during their investigation that was not documented in their reports.
- If no report was taken obtain statements, observations, and demeanor of the parties involved, and circumstances related to the radio call.

NEIGHBORS – Determine:

- If neighbors have seen or heard evidence of abuse, e.g., injuries, statements, yelling, fighting, police cars.
- How frequent are the occurrences and when was the last incident.
- If a pattern of behavior or chronic problem exists.
- If a neighbor is a fresh complaint witness to any of the incidents of abuse. Get details.

ACCUSED EMPLOYEE – Determine:

During the criminal portion of the investigation (within the City) an accused employee (suspect) DOES NOT have the right to an employee representative since no administrative rights apply. The officer may provide a voluntary statement for the criminal portion of the investigation, and this statement can be used for criminal filing consideration. The Investigating Officer should read the officer his Miranda Rights prior to obtaining any voluntary statements. If the accused officer does not waive his rights, do not obtain a statement.

During the administrative portion of the investigation, investigating officers shall read the Employee Admonition of Rights and the officer will be compelled to provide a statement. Below are a list of questions to consider:

- The nature and length of the relationship with the victim.
- The specific events and obtain a narrative description that led up to the incident and the incident itself.
- The inconsistencies (if any) between the suspect's statements and the victim's/witnesses' statements and address them during the interview.
- The inconsistencies (if any) between the suspect's statements and the police reports and evidence, 911 calls, photographs, etc. and address them during the interview.
- The accused officer's response to the children's statements.
- The reason for the aggression.
- If the employee has a history of domestic violence or violent behavior (check complaint history and performance evaluations).

Evidence

Due to the nature of domestic violence cases and often the victim's reluctance to move forward with both criminal and administrative cases, it is vital that a thorough investigation is completed at the onset. Below is a list of hyperlinks to assist the investigator with his/her investigation:

[**Domestic Violence Wheel**](#)

[**Stay Away Order Exemplar**](#)

[**Confiscation of Firearms Exemplar**](#)

[**VINE Pamphlet**](#)

[**Marsy's Rights card**](#)

[**Domestic Violence Notebook Dividers**](#)

Sexual Assault Investigations

Sexual assault investigations are among the most sensitive and complex investigations to conduct. Such investigations are sensitive in that the victims feel violated and traumatized and the suspects are stigmatized by the mere accusation. The investigations are complex in the amount of evidence to gather and analyze while simultaneously managing an objective investigation, often in the face of great emotional crisis.

Resources

Some resources available to help the investigation are:

- Special Assault Section, Robbery-Homicide Division
- Sexually Exploited Child Unit, Juvenile Division
- Sexual Assault Coordinator, Area detectives
- Abused Child Unit, Juvenile Division
- "Preliminary Investigation of Sexual Assault Crimes – Part I The Interview and Crime Report," [Training Bulletin, LAPD, Volume XXXV, Issue 13, July 2003.](#)
- "Preliminary Investigation of Sexual Assault Crimes – Part II Medical/Forensic Examinations," [Training Bulletin, LAPD, Volume XXXIV, Issue 5, May 2007.](#)
- "Preliminary Investigation of Sexual Assault Crimes – Part III Gathering and Preserving Evidence," [Training Bulletin, LAPD, Volume XXXV, Issue 15, July 2003.](#)

Confidentiality for Victims

By state law, sexual assault victims have a right to privacy. The procedure for following this law is outlined in the Training Bulletin, *Preliminary Investigation of Sexual Assault Crimes*. A "Victim of Sex Crime Request for Confidentiality Form," Form 3.02, shall be attached to crime reports. Though personnel complaints are confidential by law, you should extend the confidentiality into the administrative investigation as well.

Fully record the sexual assault victim's (complainant) name, address, and telephone number on the Chronological Record. Indicate the complainant's first name and last initial in quotes to the right of the personal information for future reference (see below). Only use the alias in the report. Refer to the complainant, and any other persons deemed confidential for purposes of a sexual assault investigation, by the designated report alias.

Need for Emergency Medical Care

Victims of sexual assault shall be transported to an appropriate hospital for medical care and the collection of evidence as soon as possible after the crime (4/210.35). Certain conditions are "high risk" and indicate the need for immediate transport to an emergency medical setting, including serious physical injuries and/or signs of strangulation, loss of consciousness, or suspected drugging.

Medical Treatment

The urgency of medical treatment and the type of examination will depend on the amount of time elapsed between the assault and the complainant's reporting of the incident. Generally, forensic evidence should be collected within 96 hours of a sexual assault. However, in some cases, evidentiary examinations should be conducted after 96 hours. Obtain advice from experts when uncertain. Provide medical treatment prior to any in-depth interview when less than 96 hours has elapsed since the assault.

Take the complainant, as soon as possible, to a local medical facility capable of conducting a comprehensive medical examination for sexual assault. The best medical facilities utilize Sexual Assault Response Teams (SARTs) comprised of specially trained personnel to deal with sexual assault treatment. Robbery-Homicide Division maintains a list of contract and non-contract hospitals authorized to conduct examinations. For a list of authorized hospitals, click on the hyperlink below:

[Sexual Assault Response Team Hospitals](#)

Even when the opportunity has passed for obtaining biological evidence, SART personnel have the ability to identify internal trauma consistent with sexual assault several days after the fact. Consult with experts to determine the best protocol regarding the need for medical treatment and examination. Generally, no treatment is sought when more than 30 days have elapsed since the assault, but that does not preclude the need to document injuries, provide guidance or counseling.

Fresh Complaint Witnesses

Attempt to locate any witnesses as soon as possible especially the "fresh complaint" witness. **Fresh complaint witnesses are an exception to the hearsay rule in court.** This is the first person the victim talked to about the incident. Also, try to locate the first person that saw the victim after the assault. This person may provide details about the victim's appearance and emotional state immediately after the attack. Include any additional facts about the assailant in a supplemental crime broadcast. Any persons or witnesses located at the scene of the crime should immediately be separated, identified and interviewed before they leave the scene. If an individual must leave before being interviewed, obtain information on where and how the individual can be contacted.

Evidence Gathering and Booking

Physical evidence is crucial to sexual assault investigations. Evidence may exist at the scene of the assault, on the complainant, and on the accused. Below is a partial list of items to consider seizing, booking, or finger printing:

- All biological evidence that could be present.
- Bedding.
- Complainant's clothing.
- Accused employee's clothing.
- Used condoms left at the scene
- Items handled by the accused employee (latent prints).
- Diary or Journal.
- Personal notes.
- Any photos or video.
- Social media if applicable.

A Sexual Assault Evidence Kit was developed for use by law enforcement agencies countywide. The kits are available at every hospital in which sexual assault victims are treated.

The kit also has a requirement to obtain a urine sample from the victim. The urine sample will be tested for a variety of drugs, often used against victims in sexual assaults. Since whole blood will no longer be obtained, now ALL items which may contain biological evidence can be booked for frozen storage (DM 4/210.35).

Note: The sealed evidence kit envelope should be booked as one item on the property report and stored frozen at Property Division.

All other items gathered which are wet and may contain biological evidence, should be air dried at room temperature. After drying, each item should be packaged in a separate paper bag or property box to avoid cross contamination.

Sexual assault victims go through a series of stages in coping with the assault. Some of the stages include shock, denial, and acute distress. Don't mistake forgetfulness or a lack of clarity as untruthfulness. The trauma of an assault can be the cause for inconsistent recollections or a delay in reporting the incident.

Recommendations for Interviews

Juvenile Complainants - When the complainant is a juvenile, you should determine whether the child should be interviewed by an investigator of the same gender. You may also ask the parents or guardians if they prefer an investigator of the same gender to conduct the interview. It's your call whether to allow the parents to observe the interview; consider whether their presence will be a help or hindrance.

Witness Interviews:

Witness interviews can be crucial to sexual assault investigations. Some specific areas for probing witnesses are listed below:

- The type of relationship shared by the complainant and accused.
- The identity of fresh complaint witnesses and what the person saw.
- Date the complainant first mentioned the incident.
- Statements of the complainant after the incident.
- Description of the complainant after the incident.
- Location of occurrence.
- Other possible witnesses.
- Polygraph Examination.

Finally, inform the complainant that follow-up medical and psychological care is available through a variety of professional and community sources. Provide the complainant with a copy of the *Taking Action* booklet.

Sexual Assault Investigative Report Aid**Sexual Assaults – Comments / Planned Investigative Steps****Sexual Assault Investigation Checklist**

Stalking Investigations

In 1990, California passed the first anti-stalking legislation in the nation, **Penal Code Section 646.9**. The concept was pioneered by the Los Angeles Police Department's, Threat Management Unit (TMU). The intent of the stalking law was to create a preemptive option for law enforcement to stop an aggressor from harming a victim before the actual harm was done. In the years since the law's enacted, law enforcement has come to recognize stalking as a serious crime due to:

- Its prevalence in society.
- Its close link to domestic violence.
- Four recognized profiles of a stalker.

As a supervisor charged with investigating police misconduct, you must be able to recognize the issues related to stalking crimes and understand that Department employees can be both victims and perpetrators of stalking.

Stalking Defined

Stalking is a specific-intent crime which can be prosecuted as either a misdemeanor or felony. The crime itself can be broken down into three elements:

Any person who:

1. *Willfully, maliciously, and repeatedly follows or harasses another person and,*
2. *Who makes a credible threat,*
3. *With the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family, Is guilty of the crime of Stalking.*

To fully define Stalking, the terms Harass, Course of Conduct, and Creditable Threat must also be defined.

Harass, according Penal Code Section 646.9(e), is defined as:

...a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose. . .

The "reasonable person" standard must then be applied as the test to determine if the stalker's conduct was enough to cause a reasonable person "to suffer substantial emotional distress." Moreover, the stalker's actions "must actually cause substantial emotional distress" to the victim.

Course of Conduct, refers to a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.

Creditable Threat, means a verbal or written threat or a threat implied by a pattern of conduct or a combination of verbal or written statements and conduct made with the intent to place the victim that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family and made with the intent to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to prove that the stalker had the intent to actually carry out the threat. Indeed, persons in jail whose conduct meets the elements of stalking can be prosecuted.

Stalker Profiles

Four stalker profiles have been identified through a study of 102 cases by the Threat Management Unit (TMU). Some of the characteristics of each profile are listed below:

Simple Obsessional

- Most common and most prone to injuries/death
- Closely related to domestic violence
- Stalker is usually male
- Has had prior relationship with victim (acquaintance, ex-spouse, ex-lover, ex-boss, etc.)
- Precipitating event begins a campaign of harassment (break up, separation, perceived mistreatment)
- Goal is to restore relationship or achieve retribution
- Can resort to physical harm or destroying property

Love Obsessional

- Delusion is often accompanied by schizophrenia
- Is a stranger to the victim
- Is obsessed with fanatical love for the victim
- Often knows the victim through media exposure
- Mounts a campaign of harassment to make the victim aware of the stalker's existence

Erotomania

Erotomania is a type of delusion in which the affected person believes that another person, usually a stranger, high-status or famous person, is in love with him or her. The illness often occurs during psychosis, especially in patients with schizophrenia, delusional disorder or bipolar mania.

- Delusional.
- Falsely believes that the victim (usually someone famous or rich) is in love with the stalker.
- Usually does not pursue face-to-face contact.
- Nature of stalking is letter writing, visiting victim's home, and telephone calls.

False Victimization Syndrome

- The fourth category was not identified in the original study by the TMU. After several more years and cases, the fourth category was identified to classify those who (usually women) report they were being stalked, but were in fact, either consciously or subconsciously, placing themselves in the role as the victim.

Interviewing the Victim

When interviewing the victim, ask questions that will elicit answers to articulate the victim's fear level and establish the elements of harassment, credible threat, and course of conduct. While a victim may say she is not afraid, her actions may say otherwise. A few examples of victims' actions that speak to a level of fear might be:

- Changing locks.
- Changing telephone numbers.
- Getting a dog.
- Getting an alarm.
- Moving in with roommate.
- Buying a gun.
- Using an answering machine to monitor incoming phone calls.

Be sure to support victims through referrals to services and advise them on how to safeguard themselves against stalking: changing phone numbers, using an answering machine, getting a PO box, relocating, or changing identity. The TMU has a "Stalking Victim's Handbook" which explains much of this information.

Interviewing the Accused

According to the TMU, face-to-face contact between the investigator and the stalker has the best results in halting the stalking activity. Discuss with your supervisor, and the accused employee's commanding officer, the need to give a written administrative order not to contact the subject, pending the investigation. Be sure to articulate the order that the employee's actions are causing the victim

to fear for his/her safety or the safety of his/her family. This will ensure that in the event of any continued contact, the intent will have been established and can be more easily proven for prosecution.

Investigative Points

By studying the four profiles you should be able to formulate questions and plan investigative approaches for complaints related to stalking. Here are a few considerations:

- Employees can be either the victim or the stalker.
- The prevalence of TV shows such as “LAPD: Life on the Beat” and “COPS” have thrust many officers into the media spotlight, giving potential stalkers a victim. Cases have occurred in which a member of the public initiated a relationship with an employee and later stalked the employee, then made false claims against him/her when the relationship appeared over. Investigative techniques help to reveal the false complaint, and it was also discovered that the complainant had made a false complaint under similar circumstances against an officer of another agency.
- Request an analysis of the accused employee’s NECS computer activity to determine if the victim’s name was queried by the employee for a legitimate purpose.
- No single incident alone will constitute stalking; you must look for a pattern of conduct. It's the totality of several or many incidents that speak to the pattern of conduct. And remember, incidents related to a legitimate purpose do NOT constitute stalking activity. Therefore, officers conducting a legitimate surveillance are NOT stalkers.

Substance Abuse-Related Investigations

Police department employees are not immune from the pervasiveness of drug and alcohol abuse; yet, the public's trust demands that Department employees be above reproach, especially with regard to drugs and alcohol. The implication of criminal misconduct and the potential for corruption make substance abuse investigations highly important, sensitive and complex.

An order to an employee to submit to chemical testing for drugs or alcohol must be based on objective symptoms of intoxication or reasonable suspicion that ingestion has occurred. Typically, the basis for most substance abuse investigations will be one or more of the following:

- Objective symptoms.
- A recognized pattern of progressively diminishing performance.
- Statements from an informant (complainant).
- Acknowledgment from the employee of a substance problem.

Objective Symptoms

Objective symptoms are the outward, physical manifestations of substance ingestion. Symptoms will vary depending on the substance ingested. Some of the most commonly observed symptoms are:

- Impaired motor skills.
- Slurred speech.
- Bloodshot eyes.
- Emotional outbursts.
- Profuse sweating.

Reasonable Suspicion

In the absence of objective symptoms, the Department's order to an employee to submit to chemical testing must be based on reasonable suspicion, the same standard of proof needed by any police officer to make an investigative detention.

Preliminary Investigation

Prior to confronting the employee about allegations, gather preliminary information to determine the basis on which the employee will be ordered to submit to a chemical test.

Use the following outline as a guide:

- What were the circumstances of the incident which brought the allegations to the Department's attention?
- Have any changes been observed in the employee's personality, work habits, appearance, health, or family life?
- Have any objective symptoms of substance ingestion been observed?
- Does the employee know that he/she is suspected of substance abuse?
- What substance is the employee suspected of abusing?
- When was the last time the employee ingested the substance?
- What is the employee's pattern of absence or tardiness during the period of suspected substance abuse?
- Does ingestion occur on or off duty?
- Does the employee's suspected misconduct necessitate surveillance?

Authorization for Testing

Prior to asking or ordering an employee to submit to a chemical test, consult the following:

- Employee's current MOU regarding any restrictions on chemical testing.
- Commanding Officer of IAG.
- Employee's commanding officer.

Below is the hyperlink to the Chemical Test Administrative Advisement Form.

[Chemical Test Administrative Advisement](#)

Available Tests

Four modes of testing are available for determining if an employee has ingested an illicit drug or is under the influence of an illicit drug, alcohol or prescribed medication: breath, urine, blood, and hair testing. Regardless of the type of test administered, when the test is compelled, employees should be advised that the results will be used for purposes of the administrative investigation only (DM 3/836.10).

Blood Analysis

Blood analysis is the most intrusive method of testing and should be used as a last resort, or under special circumstances, and with the concurrence of the C/O, IAG (DM 4/343.40).

Breath Analysis

Breath Analysis may be administered when alcohol intoxication *only* is suspected. An employee *may* be given the choice of breath (or blood) test when only alcohol ingestion is suspected. However, employees do not have the *right* to select the type of chemical tests. The type of test used for an administrative investigation is determined by the lead investigator with the consultation of the employee's

commanding officer and IAG. A breath test should consist of at least two breath samples (DM 4/343.38).

When necessary, sobriety tests of Department employees shall be administered in accordance with relevant provisions of the concerned employees' current MOU (DM 3/836.05).

Exception: Results of a chemical test, obtained for an administrative investigation, can by order of the court, be used against an officer in criminal proceedings.

Urine Analysis

Urine analysis is the preferred method of testing for drug or alcohol ingestion as it is less intrusive than the blood test yet able to detect the presence of drugs over an extended period. When a negative breath-test result contradicts objective symptoms of alcohol intoxication, a urine test should be administered to determine the presence of drugs (DM 4/343.42).

Hair Testing

Hair testing may be administered under certain circumstances. If there was reasonable suspicion for the ingestion of narcotics and when the time period has passed for testing blood, breath, or urine, usually after 72 hours, hair testing could be used. Hair testing can indicate the presence of ingested narcotics for up to six months. The drawback is that hair testing cannot detect the amount nor the exact time period the narcotic was ingested. It can definitively and reliably prove the ingestion of the narcotic.

Criminal Offense Involved

When a Department employee is detained in the City and a chemical test is obtained for the criminal investigation, that test should be used for the administrative investigation. When the employee refuses to submit to the chemical testing for the purposes of the criminal investigation, the employee may be ordered to submit to a chemical test. The sample may be used for administrative purposes only (DM 3/836.15).

When a Department employee is detained outside the City for a criminal offense, and a chemical test has been administered by an outside agency, the test results should be considered the test for the administrative investigation (DM 3/836.20).

Contacting the Employee for Testing

The initial contact with the employee should be audio recorded with the employee's knowledge. In cases which involve sworn employees and no interrogation, the meeting should be referred to as a "contact". **Avoid any reference that could be construed as an interrogation.** Conducting the meeting as a contact and audio recording it will protect the evidence gathered from future

assertions that it was obtained without consent, illegally, or by violating the employee's rights.

Conduct the contact in a fair and impartial manner, which includes consideration of the employee's dignity. On-duty employees suspected of having ingested drugs or alcohol should be removed from public view immediately. Samples for testing should be collected at a location that will minimize embarrassment for the employee. Consider the use of police stations other than the one to which the employee is assigned, or use facilities belonging to other police agencies, such as a sheriff's substation. Ask the employee to remove his/her uniform shirt and other equipment that would tend to identify him/her as a police employee.

Preferably, samples for chemical testing should be collected at a police facility while the employee is on-duty. However, circumstances can necessitate an immediate response to the employee's residence, or contacting the employee while off-duty. Under such circumstances, recording the contact should begin with the knock at the door. The employee should be placed on-duty and ordered to a police facility. Employees who refuse to cooperate should be given a direct order with an explanation that failing to obey the order will result in a charge of insubordination. The presence of the employee's commanding officer or a supervisor will tend to add validity to the employee's duty to cooperate.

Right to Representation

Unless an interrogation is anticipated regarding the employee misconduct, the contact for the sole purpose of obtaining a chemical test samples does not constitute an interrogation to which employees are entitled to employee representation. However, if the employee requests to have an employee representative present, grant the request. The presence of a representative may serve to help the process, as the representative should recognize the employee's obligation to submit to the test rather than face termination.

Allow up to **two hours** for the representative to arrive; however, as time is of the essence due to the potential loss of evidence, proceed with the testing if the representative does not or cannot arrive in time. The employee should be observed for the entire time prior to the chemical test. Occasionally, the situation may arise when the employee has the need to urinate but no representative has arrived. The solution is to have the employee provide the sample with the understanding that after the employee consults with the representative, the employee will have the opportunity to refuse the test, and the sample will be destroyed.

Drug Recognition Expert

Consider the use of a Drug Recognition Expert (DRE), who holds a supervisory rank, when the sole basis of the investigation consists of objective symptoms. A DRE examination should be conducted only when obvious symptoms of impairment are present for the DRE supervisor to observe. A DRE examination

can determine the current cause of impairment whereas a urine test can only detect if a substance is present. Refusal by the employee to cooperate in a DRE examination is grounds for a charge of insubordination.

The use of DRE supervisors generally should be limited to qualified supervisors assigned to Traffic Coordination Section. While waiting for the DRE to arrive, administer a breath test. The DRE will use the results of the breath test as a standard by which to evaluate the employee's level of impairment and determine if it is related to drugs, alcohol, and/or a medical condition. If the DRE determines that the impairment is related to drugs, the DRE can also determine which drug was most likely ingested. Questions asked by the DRE supervisor will most likely constitute an interrogation. Thus, employees will have a right to have a representative present. Due to the transient nature of drugs, the employee's choice in a representative may be more limited than usual.

Voluntary Submission

If the appropriate command staff recommends ordering the employee to submit to chemical testing, prior to doing so, request voluntarily submission to the test. Employees also may be asked, but not compelled, to submit to a chemical test when the preliminary investigation fails to show reasonable suspicion or when objective symptoms are not visible. A voluntarily submitted sample is useful when a lingering doubt exists about an employee's sobriety. By voluntarily submitting to a test, an employee can quickly disprove a substance-abuse allegation.

Compelled Chemical Testing

If an employee refuses to submit to a chemical test, an order to submit **for purposes of the administrative investigation only** should be given by the first available officer of appropriate rank in the following sequence (DM 3/836.10):

1. Officer-in-charge or watch commander.
2. The employee's Commanding Officer or higher in chain of Command.
3. Investigating officer, IAG (regardless of rank).
4. Any IAG OIC or higher in the chain of command.

The order to submit a sample should be preceded by an explanation that failure to submit to the testing may result in an additional charge of insubordination.

Samples after Refusal

Occasionally, an employee may elect to volunteer a urine sample one or more days after a refusal. Do not accept urine samples once an employee refuses and observation of the employee has ended. While the employee's volunteering of a sample may reflect a sincere change of heart, the possibility exists that the employee's regained willingness comes from having had the opportunity to flush his/her system or ingest a masking agent.

Booking Samples

Obtain a confidential DR number when booking employee's urine or blood samples. The samples will be booked in the name of the Investigating Officer. The confidential DR number safeguards the investigation by hampering accused employees' efforts to learn the results of analyses before they are released to the appropriate entity. Make a note on the evidence tag for the investigator to be notified before the release of test results, or if anyone inquires about the results.

Ending the Contact

After the test samples have been obtained, arrange for an interview date with the employee. The decision to place the employee on inactive duty and assigned to home should be made by the employee's Commanding Officer. The provision for assigning employees to inactive duty is covered under DM 3/840.20.

Polygraph Examinations

It is Department policy that requests to submit to a polygraph examination shall not be made for sworn and civilian employees. All requests for a polygraph examination should be denied.

The use of polygraph examinations is greatly limited due to legislation, case law, and inadmissibility in court or administrative hearings. Polygraph examinations may be used as an investigative tool to impeach a subject's statement. Consult with your supervisor and the Commanding Officer of IAG before requesting someone to submit to a polygraph examination.

Sworn Employees

According to GC Section 3300, Public Safety Officers cannot be compelled to submit to a polygraph examination. As such, no disciplinary action shall be taken against the officer refusing to submit to a polygraph examination. No mention of a refusal can be included anywhere in your Investigator's Notes, and the refusal cannot be mentioned in any trial or hearing (GC Section 3307).

Civilian Employees

By executive directive and past practice, no City employee shall be compelled to take a polygraph examination. The policy regarding sworn employees holds true regarding civilian employees; however, the precedent was established by case law in *Long Beach City Employee's Association v. City of Long Beach*. This California Supreme Court decision ruled that public employees cannot be compelled to undergo polygraph examinations as a condition of continued employment.

Admissibility in Court or Administrative Proceedings

Trial and appellate courts have consistently ruled that neither the results nor the mention of polygraph examinations, refused or taken, can be entered on the record in judicial or administrative hearings (*Aengst v. Board of Medical Quality Assurance*). This is a blanket exclusion which includes Public Safety Officers, public employees, and non-employee witnesses.

Proper Use for Non-Department Employee

The use of polygraph examinations is narrowly limited to witnesses or complainants who are neither City employees nor Public Safety Officers. When a subject's credibility is highly suspect, the polygraph examination can be useful as an investigative tool; often subjects may admit untruthfulness during the examination or after the examination when confronted with results. Follow these steps when pursuing a polygraph examination:

- Consult your supervisor when you believe a polygraph examination is appropriate for a non-City employee witness or complainant.

- Conclude the initial interview with the subject.
- Ask the subject if he/she would be willing to submit to a polygraph examination.
- Never mention a polygraph examination in a threatening or coercive manner.
- Document the test date or refusal in your Chronological Record only.
- If the examination is conducted, mention ONLY the date of the examination and the name of the examiner in a footnote or Investigator's Note of the investigation report. DO NOT mention any test results or conclusions in the investigation report.
- After the test, document the examiner's opinion in your Chronological Record only.
- If the results were inconclusive or untruthful, arrange for a second interview with the subject.
- Re-interview the subject and confront him/her with the results of the test.

If, during the polygraph examination or subsequent re-interview, the subject recants or contradicts any previous statement, or admits to lying, the polygraph examination may be referenced in the investigation. The reference should begin like this:

Complainant Jones was re-interviewed after voluntarily submitting to a polygraph examination. Jones recanted his statement and admitted to giving false information about Officer Marbury's discourteous remark.

The polygraph examiner's opinion of the subject's truthfulness **cannot** be used as evidence in any type of criminal or administrative hearing; however, statements made to the polygraph examiner **may be used**.

Officer Representation Section

The Officer Representation Section (ORS) was created in 1991. It falls under the chain of command of Office of Administrative Services (DM 2/066). The section's function is to:

- Provide functional supervision to employees selected as defense representatives.
- Assist sworn personnel in obtaining employee representation.
- Identify training needs and coordinate training regarding employee representation.
- Research and review legislation and court decisions related to employee representation.

Representative - Defined

According to [MOU No. 24](#), Article 10.1, employee representatives, for the ranks of lieutenant and below, may be a member of the Department from the rank of lieutenant and below, or legal counsel, or both. However, it is not necessary for the representative to be a member of the Department. Command staff officers are represented by a separate MOU which defines their representation agreement (Refer to [MOU No. 25](#)).

The employee's "choice" for a representative is not absolute. The representative cannot be involved in the incident under investigation (i.e., accused, witness, and complainant). Moreover, the choice is also subject to the reasonable consideration of the representative's availability and the urgency of the investigation [PSB Notice Dated October 31, 2011](#).

Employees have the right to representation during an interview pursuant to a personnel complaint investigation or a "special" investigation. The duties of a representative in these interviews are:

- To conduct pre-interview consultation with the employee to ascertain if the employee understands the allegations against the employee; and
- To be present with the employee during the interview for purposes of:
 1. Consultation.
 2. Advice.
 3. Clarification.
 4. Ensuring procedures are followed.
 5. Ensuring the employee's rights are not violated.

Representation shall be on an on-duty basis. When on-duty representation is impractical, the Department may use an adjusted work schedule. Such representation shall not be done on an overtime basis unless no other alternative is available and such overtime is approved by a supervisor.

The provisions of this Article shall apply to an employee who is being interviewed as a witness pursuant to a personnel complaint investigation or "special" investigation if the employee has a reasonable belief that the employee may be disciplined as a result of the investigation.

On-duty personnel selected as a representative shall obtain the approval of a supervisor before leaving their assigned duties. Permission shall not be denied unless deployment would be seriously affected or vitally important duties neglected. If this causes a delay for the employee in retaining the representative of the employee's choice, the interview will be rescheduled.

Employee representation falls into several specific categories, depending on the level of the disciplinary process or the type of investigation or hearing.

A representative shall use every legal means available and exercise the best efforts to represent the employee. Employees who are representatives may use Department facilities and resources to the extent reasonably necessary in assisting in the Skelly or appeal of the employee. This shall include reasonable logistical support for the Skelly or administrative appeal investigation. The Department is under no obligation to provide logistical support for an employee who represents him or herself as all preparation must be done on an off-duty basis ([MOU No. 24/10.6](#)).

Privileged Communications

Communications between an employee and his/her representative are privileged regarding administrative misconduct only. If the representative is a peace officer the representatives have a duty to report criminal misconduct even if the information were learned through a privileged communication as an employee representative. Thus, an employee representative who is a Department sworn employee can be interviewed and ordered to answer questions which divulge information regarding an accused employee's criminal misconduct.

Below are two hyperlinks that will provide you with the Skelly Manual as well as the Waiver of Attorney Client Privilege.

[Skelly Manual](#)

[Waiver of Attorney Client Privilege Form](#)

Civilian Employee

Labor laws and Department policies differ slightly between civilian and sworn employees when it comes to administrative investigations and personnel matters. Some considerations for dealing with Department civilian employees are listed below:

Limitations Period

Effective January 1, 2002, GC Section 3508.1 established a limitations period for imposing discipline against civilian police employees. The limitation period is defined as one year between the time the complaint is brought to the Department's attention to the time the proposed disciplinary action.

Government Code Section 3300

Civilian employees are not protected under *GC Section 3300*.

Representation

Though civilian employees are not protected under *GC Section 3300*, other case law exists which affirms the right of employees to be represented by a member of their labor organization during administrative investigation interviews (*NLRB v. J. Weingarten, Inc.*). Civilian employees may waive their right to a union representative and opt instead to have a Department employee as a representative; however, the Department employee must be a member of the same collective bargaining unit.

Self-Incrimination

You should follow the same procedures for admonishing civilian employees as you do for sworn employees (i.e., *Miranda* and *Administrative* admonishments) during investigations involving criminal misconduct. When an administrative investigation involves criminal allegations, civilian employees shall be read the *Miranda Admonition*; and upon their refusal to waive, they may be ordered to answer questions with the stipulation that their compelled statement cannot be used against them in any criminal proceedings (*Lefkowitz v. Turley, et al*). Thus, civilian employees can be compelled to answer questions and are protected by similar case law as sworn employees (i.e., *Lybarger v. City of Los Angeles*).

Civilian Labor Organizations

Department civilian employees are represented by seven labor organizations in seventeen memoranda of understanding:

- American Federation of State, County, and Municipal Employees (AFSCME)
- Engineers & Architects Association (EAA)
- Los Angeles Building and Construction
- International Union of Operating Engineers
- Los Angeles City Supervisors & Superintendents Association
- Los Angeles City Employees Union, Local 347
- Los Angeles Professional Managers Association

