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## Law Enforcement Authority

### 100.1 PURPOSE AND SCOPE

Law enforcement officers are granted the authority to perform their function based on established legal authority. This department does not tolerate abuse of law enforcement authority.

### 100.2 APPLICABILITY

This section applies to all sworn officers in the Department.

### 100.3 PEACE OFFICER POWERS

All sworn employees of this Department shall be considered peace officers pursuant to Penal Code § 830.5. The authority of any such peace officer extends to any place in the State of California while engaged in the performance of the duties of their employment. Penal Code § 830.5 limits the authority to:

- A. Conditions of probation by any person in this state on probation;
- B. the escape of any inmate or ward from a state or local institution;
- C. the transportation of persons on probation, mandatory supervision, or postrelease community supervision.
- D. violations of any penal provisions of law which are discovered in the course of and arise in connection with his employment.
- E. the rendering of mutual aid to any other law enforcement agency

Probation Officers are also designated as Peace Officers by the following statutes:

- 1) Section 1203.2, Penal Code;
- 2) Section 283, Welfare and Institutions Code; and
- 3) Section 131.4, Code of Civil Procedure

Officers are cautioned that the arrest powers authorized under Section 830.5 P.C. are of a limited nature and may be utilized only within the departmental policy.

#### 100.3.1 JUVENILE PROBATION - AUTHORITY FOR

Sections 270 and 271 of the Juvenile Court Law of the Welfare and Institutions Code provides for the appointment of County Probation Officers and Deputy Probation Officers. Other sections of that law prescribe the limitations, duties and responsibilities of the Juvenile Court and the Probation Officer and provide for the operation of juvenile institutions: Juvenile Corrections, Welfare and Institutions Code, Sections 601-842 and 900-914; Juvenile Court Support, Welfare and Institutions Code Sections 600-827 and 900-914; Institutional Juvenile Corrections, Article 24 Welfare and Institutions Code; Juvenile Detention, Article 23 of Welfare and Institutions Code.

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#### 100.3.2 ADULT PROBATION - AUTHORITY FOR

Although several other statutes affect Adult Probation, the authority for Adult Probation is primarily set forth in Section 1203-1203d of the California Penal Code.

They include the legal authority for the granting of probation; the manner in which it may be applied, together with certain specific limitations and responsibilities of the Court and of the Probation Officer, i.e.: Adult Supervision, Penal Code Sections 1203, 1215 et al; Adult Investigations, Penal Code Section 1203 et al; Code of Civil Procedures, Section 131.3.

#### 100.3.3 ADULT INSTITUTIONS - AUTHORITY FOR

Sections 4100 through 4137 of the California Penal Code provide the authority for establishment and operation of County Industrial Farms and Road Camps. In addition, Section 1208 of the Penal Code (Work Furlough Rehabilitation Law) provides the authority for employment of prisoners outside their place of confinement. These authorities and other pertinent statutes govern operation of Adult Institutions, including Work Furlough Unit responsible for men, i.e., Welfare and Institutions Code, Sections 1850-1859.

### **100.4 BILL OF RIGHTS**

#### 100.4.1 PURPOSE

This section presents an abridgement of the Peace Officers' "Bill of Rights."

#### 100.4.2 DEFINITIONS

Peace Officers: Probation Officers are peace officers while engaged in the performance of their duties, or any superintendent, supervisor or employee having custodial responsibilities in an institution operated by the Probation Department.

Punitive Action: "Punitive action" is any action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand or transfer for purposes of punishment.

#### 100.4.3 POLICY

In any disciplinary action, Probation Department personnel shall adhere to the provisions of the Peace Officers' "Bill of Rights."

#### 100.4.4 PROVISIONS OF THE PEACE OFFICERS' "BILL OF RIGHTS"

**California Government Code, Section 3302:** Political activity membership on school board

(a) No public safety officer shall be prohibited from engaging, or be coerced or required to engage, in political activity.

(b) No public safety officer shall be prohibited from seeking election to, or serving as a member of, the governing board of a school district.

**California Government Code, Section 3303:** Investigations and interrogations: conduct, conditions; representation, reassignment

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When a public safety officer is under investigation and subjected to interrogation by his commanding officer, or any other member of the employing public safety department, which could lead to punitive action, the interrogation shall be conducted under these conditions:

(a) The interrogation shall be conducted at a reasonable hour, preferably when the public safety officer is on duty, unless the seriousness of the investigation requires otherwise. If the interrogation occurs during off-duty time, the officer must be paid for the off-duty time according to department procedures and he/she shall not be released from employment for any work missed.

(b) The person under investigation shall be informed before the interrogation of the rank, name and command of the officer in charge of the interrogation, the interrogating officers and all others present during the interrogation. All questions directed to the person under investigation shall be asked by and through no more than two interrogators at one time.

(c) The officer under investigation shall be told of the nature of the investigation before any interrogation takes place.

(d) The interrogation shall last for only a reasonable period of time, taking into account the gravity and complexity of the issue under investigation. The person under interrogation shall be allowed to attend to his/her own personal physical necessities.

(e) The one 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. No promise of reward shall be made as an inducement to answering any question. The employer shall not cause the one under interrogation to be subjected to visits by the press or news media without his/her express consent nor shall his home address or photograph be given to the press without his/her express consent.

\* *Lybarger v. City of Los Angeles*, 30 Cal. 3 822 (1985). Although an officer who refuses to cooperate in an investigation of potential criminal conduct may be administratively disciplined; discipline that is imposed on a charge of insubordination for refusal to answer questions involving potential criminal conduct is invalid unless the officer is properly informed of his/her constitutional rights-including the protection that statements he/she makes cannot be used against him/her in a criminal proceeding.

(f) The complete interrogation of the officer may be recorded. If a tape is made of the interrogation, the officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a later time. The officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports deemed confidential may be entered in the officer's personnel file. The officer being interrogated shall have the right to bring his/her own recording device and record any and all aspects of the interrogation.

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(g) If before or during the interrogation it is deemed that the officer may be charged with a criminal offense, he/she shall be immediately informed of his/her constitutional rights.

(h) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters likely to result in punitive action against any officer, that officer, at his/her request, shall have the right to be represented by a representative of his/her choice who may be present at all times during such interrogation. The representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for noncriminal matters.

This section shall not apply to any interrogation of (an officer) in the normal course of duty, counseling, instruction or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities.

(i) No officer shall be loaned or temporarily reassigned to a location or duty assignment if a sworn member of his/her department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstance.

**California Government Code, Section 3304:** Lawful exercise of rights; insubordination; administrative appeal

(a) No officer shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment because of the lawful exercise of the rights granted under this chapter or the exercise of any rights under any existing administrative grievance procedure.

Nothing in this section shall preclude a head of an agency from ordering a public safety officer to cooperate with other agencies involved in criminal investigations. If an officer fails to comply with such an order, the agency may officially charge him/her with insubordination.

(b) No punitive action nor denial of promotion on grounds other than merit shall be undertaken by any public agency without providing the officer with an opportunity for administrative appeal.

**California Government Code, Section 3305:** Comments adverse to interest; entry in personnel file or in other record; opportunity to read and sign instrument; refusal to sign.

No officer shall have any comment adverse to his interest entered in his/her personnel file, or any other file used for any personnel purposes by his/her employer, without the officer having first read and signed the instrument, indicating he/she is aware of such comment, except that such entry may be made if after reading (it) the officer refuses to sign it. If (an officer) refuses to sign, that fact shall be noted on that document and signed or initialed by such officer.

**California Government Code, Section 3306:** Response to adverse comment entered in personnel file; time.

(An officer) shall have 30 days within which to file a written response to any adverse comment entered in his/her personnel file. Such written response shall be attached to, and shall accompany, the adverse comment.

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**California Government Code, Section 3307:** Polygraph examination; right to refuse; effect.

No officer shall be compelled to submit to a polygraph examination against his/her will. No disciplinary action or other recrimination shall be taken against (the officer) refusing to submit to a polygraph, nor shall any comment be entered anywhere in the investigator's notes that the officer refused to take a polygraph, nor shall any testimony or evidence be admissible at a subsequent hearing, trial or proceeding, judicial or administrative, to the effect that the public safety officer refused to take a polygraph.

**California Government Code, Section 3308:** Financial disclosure; right to refuse exceptions.

No officer shall be required or requested for purposes of job assignment or other personnel action to disclose any item of his/her property, income, assets, source of income, debts or personal or domestic expenditures (including those of any of his/her family or household) unless such information is obtained or required under state law or proper legal procedure, tends to indicate a conflict of interest with respect to the performance of official duties, or is necessary for the employing agency to ascertain the desirability of assigning the officer to a specialized unit in which there is a strong possibility that bribes or other improper inducements may be offered.

**California Government Code, Section 3309:** Search of locker or storage space; consent; search warrant.

No officer shall have his/her locker or other space for storage that may be assigned to him/her searched except in his/her presence, or with his/her consent, or unless a valid search warrant has been obtained or where he has been notified that a search will be conducted. This section shall apply only to lockers or other space for storage that are owned or leased by the employing agency.

**California Government Code, Section 3309.5:** Local public safety officers; applicability of chapter; jurisdiction; remedies.

(a) It is unlawful for any local public safety department to deny or refuse to any local public safety officer the rights and protections guaranteed to them by this chapter.

(b) The Superior Court will have initial jurisdiction over any proceeding brought by any local public safety officer against any local public safety department for alleged violations of this section.

(c) In any case where the Superior Court finds that a local public safety department has violated any of the provisions of this chapter, the Court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations including, but not limited to, the granting of a temporary restraining order, preliminary or permanent injunction prohibiting the local public safety department from taking any punitive action against the local public safety officer.

## **100.5 PEACE OFFICER ARREST POWERS**

### **100.5.1 PURPOSE**

To identify the authority and conditions by which a peace officer can exercise arrest powers.

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#### 100.5.2 APPLICABILITY

These policies apply to all Department peace officer employees.

#### 100.5.3 POLICY

It is the policy of this Department that no probation officer will exercise his/her arrest powers until all conditions of Penal Code § 832 have been met.

#### 100.5.4 PROCEDURE: PEACE OFFICER ARREST POWERS:

Penal Code § 832 requires that every person described as a peace officer shall receive a course of training in the exercise of his/her powers to arrest and a course of training in the carrying and use of firearms.

A. The course of training in the carrying and use of firearms is not required since departmental employees are generally prohibited from carrying firearms in the course of their duties. However, Probation Officers may be authorized to carry firearms in accordance with the Firearm Policy.

B. Probation Officers must complete such a course meeting "the minimum standards prescribed by the Commission on Peace Officer Standards and Training" within 90 days following employment and prior to the exercise of the powers of a peace officer.

#### 100.5.5 ARREST OF A NON-PROBATIONER

A Probation Officer may arrest a non-probationer for a criminal offense if that officer is engaged in probation-related duties at the time such a situation occurs.

Probation Officer intervention may be appropriate in the examples described below:

A. Crimes against Persons: The Probation Officer sees an assault or battery in progress or is the victim of an assault or battery, and arrest is the most effective means of intervening.

B. Interference: A non-probationer is interfering with an investigation.

C. Property Offenses: The Probation Officer discovers illegal, stolen articles on the premises of a probationer, and it is apparent that another person present in the residence is responsible.

D. Drug Offenses: The Probation Officer discovers illegal drug use, possession of drugs, or observes a drug sale, and has probable cause to believe another person is responsible.

Probation Officers will not attempt to arrest non-probationers, except in such situations as described above, unless complying with a request from a peace officer.

#### 100.5.6 NOTIFICATION OF SUPERVISORS

Any Probation Officer making an arrest, whether the arrest was planned or unplanned, shall notify his or her supervisor as soon thereafter as possible.

#### 100.5.7 DUTY STATUS

A Probation Officer is considered "on-duty" during his/her normal scheduled working hours and whenever he/she is called back to duty and required to respond to a probation-related situation. An Officer authorized to carry a firearm may also carry that firearm, along with all County issued

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gear, while on departmentally approved breaks and lunch periods. Armed officers who have been authorized by the Chief Probation Officer to carry their departmentally issued firearms off duty pursuant to PC2450 (CCW), may use their county issued firearms, and related equipment, for the purposes of training off duty. Armed officers must notify their Supervisor of their intended use of their county issued firearm, and all related equipment.

#### 100.5.8 LEVELS OF RESPONSE

A Probation Officer's level of response to a situation may be determined by:

- A. The seriousness of the violation.
- B. The Probation Officer's confidence in his or her ability to successfully make the arrest.
- C. The necessity to make an arrest at the time of the incident.
- D. Alternatives to arrest.

#### 100.5.9 REQUESTS FOR LAW ENFORCEMENT ASSISTANCE

A Probation Officer shall request additional law enforcement assistance when case factors indicate that arresting a probationer may pose a danger to the Probation Officer, the probationer, or others. Additionally, Probation Officers should not try to make an arrest if it appears that the arrest cannot be made successfully without law enforcement help.

When in the course of their duties a probation officer encounters a new crime or crimes, they may contact state, local or federal law enforcement to conduct an investigation and arrest for the new crime(s).

#### 100.5.10 IMPAIRED ABILITY TO ARREST

No Probation Officer whose motor skills, reflexes, or judgment may be adversely affected because of alcohol or medication usage should attempt to make an arrest.

### **100.6 CONSTITUTIONAL REQUIREMENTS**

All employees shall observe and comply with every person's clearly established rights under the United States and California Constitutions.