

## Records Maintenance and Release

### 605.1 PURPOSE AND SCOPE

This policy provides guidance on the maintenance and release of Department records. Protected information is separately covered in the Protected Information Policy.

### 605.2 POLICY

The Yolo County Probation Department is committed to providing public access to records in a manner that is consistent with the California Public Records Act. (Gov. Code § 6250 et seq.)

### 605.3 CUSTODIAN OF RECORDS RESPONSIBILITIES

The Chief Probation Officer shall designate a Custodian of Records. The responsibilities of the Custodian of Records include but are not limited to:

- (a) Managing the records management system for the Department, including the retention, archiving, release, and destruction of Department public records.
- (b) Maintaining and updating the Department records retention schedule including:
  1. Identifying the minimum length of time the Department must keep records.
  2. Identifying the Department division responsible for the original record.
- (c) Establishing rules regarding the inspection and copying of Department public records as reasonably necessary for the protection of such records. (Gov. Code § 6253.)
- (d) Identifying records or portions of records that are confidential under state or federal law and not open for inspection or copying.
- (e) Establishing rules regarding the processing of subpoenas for the production of records.
- (f) Ensuring a current schedule of fees for public records as allowed by law is available. (Gov. Code § 6253.)
- (g) Determining how the Department's website may be used to post public records in accordance with Government Code section 6253.
- (h) Ensuring that current Department standards, policies, practices, operating procedures and education and training materials are posted on the Department website in accordance with Penal Code section 13650.
- (i) Ensuring that public records posted on the Department website meet the requirements of Government Code section 6253.10 including but not limited to posting in an open format where a record may be retrieved, downloaded, indexed, and searched by a commonly used internet search application.
- (j) Ensuring that a list and description, when applicable, of enterprise systems (as defined by Gov. Code § 6270.5) is publicly available upon request and posted in a prominent location on the Department's website.

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#### 605.3.1 ADULT PROBATION CASE FILES

Adult Probation Files (Records) constitute a part of the records of the Court and shall at all times be open to the inspection of the Court or any person appointed by the Court for that purpose, as well as all magistrates, or as otherwise ordered by the Court. (Pen. Code § 1203.10.)

#### 605.3.2 ADULT PROBATION REPORTS

Adult Probation reports filed by the Probation Officer with the Court may be inspected or copied as follows:

- (a) By any person, from the date judgment is pronounced or probation granted, up to and including sixty (60) days from the date judgment is pronounced or probation is granted, whichever is earlier.
- (b) By any person, at any time, by order of the Court, upon filing a petition by such person.
- (c) By the general public, if the Court upon its own motion orders that a report shall be open or that the contents of the report shall be disclosed.
- (d) By any person authorized or required by law to inspect or receive copies of the report.

Any copies requested by the general public under the above provisions shall be obtained from the Court Clerk and shall not be provided by the Probation Department.

#### 605.3.3 JUVENILE PROBATION RECORDS

Juvenile Probation records, including all petitions filed, reports of the Probation Officer, and all other documents contained in the file that are submitted to the Court may be inspected but not copied by the following:

- (a) Court personnel.
- (b) The minor who is the subject of the proceeding.
- (c) The minor's parents or guardian.
- (d) The attorneys for the parties.
- (e) District Attorney.
- (f) Child Protective Services.
- (g) School officials pursuant to the provisions of Welfare and Institutions Code section 827(b)(1) and section 827(e).
- (h) Any other person designated in Welfare and Institutions Code section 827.

#### 605.3.4 PERSONNEL RECORDS

Personnel records, medical records and similar records that involve personal privacy shall not be made public except as required by law or by court order. (Gov. Code § 6254(c).)

Peace officer personnel records are deemed confidential and shall not be made public or otherwise released to unauthorized individuals or entities absent a valid court order. (Pen. Code § 832.7 et seq.; Evid. Code §§ 1043 and 1045.)

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The identity of any officer subject to any criminal or administrative investigation shall not be released without the consent of the involved officer or prior approval of the Chief Probation Officer or as required by law.

#### **605.4 PROCESSING REQUESTS FOR PUBLIC RECORDS**

Any Department employee who receives a request for any record shall route the request to the Custodian(s) of Records or the authorized designee.

##### **605.4.1 REQUESTS FOR RECORDS**

Any member of the public, including the media and elected officials, may access unrestricted records of this Department, during regular business hours by submitting a written and signed request that reasonably describes each record sought and paying any associated fees. (Gov. Code § 6253.)

The processing of requests for any record is subject to the following. (Gov. Code § 6253):

- (a) The Department is not required to create records that do not exist.
- (b) Victims of an incident or their authorized representative shall not be required to show proof of legal presence in the United States to obtain Department records or information. If identification is required, a current driver's license or identification card issued by any state in the United States, a current passport issued by the United States or a foreign government with which the United States has a diplomatic relationship or current Matricula Consular card is acceptable. (Gov. Code § 6254.30.)
- (c) A response to the request or the reason for non-disclosure will be provided promptly, but no later than 10 days from the date of request, unless unusual circumstances preclude doing so. If more time is needed, an extension of up to 14 additional days may be authorized by the Custodian(s) of Records or the authorized designee. If an extension is authorized, the Department shall provide the requester timely written notice that includes the reason for the extension and the anticipated date of the response.

1. When the request does not reasonably describe the records sought, the Custodian(s) of Records shall assist the requester in making the request focused and effective in a way to identify the records or information that would be responsive to the request including providing assistance for overcoming any practical basis for denying access to the records or information. The Custodian(s) of Records shall also assist in describing the information technology and physical location in which the record exists. (Gov. Code § 6253.1.)

2. If the record requested is available on the Department website, the requester may be directed to the location on the website where the record is posted. If the requester is unable to access or reproduce the record, a copy of the record shall be promptly provided.

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d. Upon request, a record shall be provided in an electronic format utilized by the Department. Records shall not be provided only in electronic format unless specifically requested. (Gov. Code § 6253.9.)

e. When a record contains material with release restrictions and material that is not subject to release restrictions, the restricted material shall be redacted and the unrestricted material released.

1. A copy of the redacted release should be maintained in the case file for proof of what was actually released and as a place to document the reasons for the redactions. If the record is audio or video, a copy of the redacted audio/video release should be maintained in the Department-approved media storage system and a notation should be made in the case file to document the release and the reasons for the redacted portions.

f. If a record request is denied in whole or part, the requester shall be provided a written response that includes the statutory exemption for withholding the record or facts that the public interest served by nondisclosure outweighs the interest served by disclosure. (Gov. Code § 6255.) The written response shall also include the names, titles or positions of each person responsible for the denial.

#### **605.5 RELEASE RESTRICTIONS**

Unless otherwise provided by law, any record may be withheld from disclosure if the public interest in withholding such record clearly outweighs the public interest in disclosure.

Examples of records that may be withheld include:

- (a) Personal identifying information, including an individual's photograph; Social Security and driver identification numbers; name, address, and telephone number; and medical or disability information that is contained in any driver license record, motor vehicle record, or any Department record including traffic collision reports, are restricted except as authorized by the Department, and only when such use or disclosure is permitted or required by law to carry out a legitimate law enforcement purpose. (18 USC § 2721; 18 USC § 2722.)
- (b) Social Security numbers. (Gov. Code § 6254.29.)
- (c) Personnel records, medical records, and similar records, the release of which would involve an unwarranted invasion of personal privacy. (Gov. Code § 6254; Pen. Code § 832.7; Pen. Code § 832.8; Evid. Code § 1043 et seq.)
  - 1. Peace officer personnel records that are deemed confidential shall not be made public or otherwise released to unauthorized individuals or entities absent a valid court order.
  - 2. The identity of any officer subject to any criminal or administrative investigation shall not be released without the consent of the involved officer, prior approval of the Chief Probation Officer, or as required by law.
- (d) Victim information that may be protected by statutes, including victims of certain crimes who have requested that their identifying information be kept confidential, victims who

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are minors, and victims of certain offenses (e.g., sex crimes or human trafficking, Pen. Code § 293.) Addresses and telephone numbers of a victim or a witness to any arrested person or to any person who may be a defendant in a criminal action shall not be disclosed, unless it is required by law. (Gov. Code § 6254; Pen. Code § 841.5.)

1. Victims of certain offenses (e.g., domestic violence, sexual assault, stalking, human trafficking, adult abuse) or their representatives shall be provided, upon request and without charge, one copy of all incident report face sheets, one copy of all incident reports, or both, pursuant to the requirements and time frames of Family Code 6228.
- (e) Video or audio recordings created during the commission or investigation of the crime of rape, incest, sexual assault, domestic violence, or child abuse that depicts the face, intimate body part, or voice of a victim of the incident except as provided by Government Code section 6254.4.5.
  - (f) Information involving confidential informants, intelligence information, information that would endanger the safety of any person involved, or information that would endanger the successful completion of the investigation or a related investigation. This includes analysis and conclusions of investigating officers. (Evid. Code § 1041; Gov. Code § 6254.)
    1. Absent a statutory exemption to the contrary or other lawful reason to deem information from reports confidential, information from unrestricted agency reports shall be made public as outlined in Government Code section 6254(f).
  - (g) Local criminal history information including but not limited to arrest history and disposition, and fingerprints shall only be subject to release to those agencies and individuals set forth in Penal Code section 13300.
    1. All requests from criminal defendants and their authorized representatives (including attorneys) shall be referred to the District Attorney, County Counsel, or the courts pursuant to Penal Code section 1054.5.
  - (h) Certain types of reports involving but not limited to child abuse and molestation (Pen. Code § 11167.5), elder and dependent abuse (W & I Code § 15633), and juveniles. (W & I Code § 827.)
  - (i) Sealed autopsy and private medical information concerning a murdered child with the exceptions that allow dissemination of those reports to law enforcement agents, prosecutors, defendants, or civil litigants under state and federal discovery laws. (Code of Civil Procedure §130.)
  - (j) Information contained in applications for licenses to carry firearms or other files that indicates when or where the applicant is vulnerable or which contains medical or psychological information. (Gov. Code § 6254.)
  - (k) Traffic collision reports (and related supplemental reports) shall be considered confidential and subject to release only to the California Highway Patrol, Department of Motor Vehicles (DMV), other law enforcement agencies, and those individuals and their authorized representatives set forth in Vehicle Code section 20012.

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- (l) Any record created exclusively in anticipation of potential litigation involving this Department. (Govt. Code § 6254.)
- (m) Any memorandum from legal counsel.
- (n) Records relating to the security of the Department's electronic technology systems. (Gov. Code § 6254.19.)
- (o) A record of a civilian complaint, or the investigations, findings, or dispositions of that complaint if the complaint is frivolous, as defined by Code of Civil Procedure § 128.5, or if the complaint is unfounded. (Pen. Code § 832.7 (b)(8).)
- (p) Information connected with juvenile court proceedings or the detention or custody of a juvenile. Federal officials may be required to obtain a court order to obtain certain juvenile information. (W & I Code § 827.9; W & I Code § 831.)

Any other record not addressed in this policy shall not be subject to release where such record is exempt or prohibited from disclosure pursuant to state or federal law, including but not limited to provisions of the Evidence Code relating to privilege. (Gov. Code §6254.)

#### **605.6 SUBPOENAS AND DISCOVERY REQUESTS**

Any member who receives a subpoena duces tecum or discovery request for records should promptly contact a Supervisor and the Custodian of Records for review and processing. While a subpoena duces tecum may ultimately be subject to compliance, it is not an order from the court that will automatically require the release of the requested information.

Generally, discovery requests and subpoenas from criminal defendants and their authorized representatives (including attorneys) should be referred to the District Attorney, County Counsel or the courts.

All questions regarding compliance with any subpoena duces tecum or discovery request should be promptly referred to legal counsel for the Department so that a timely response can be prepared.

#### **605.7 RELEASE OF INFORMATION TO CRIME VICTIMS**

Crime victims have a constitutional right to be included in the Court process during the adjudication of their case. Probation officers have certain statutory obligations in felony cases to notify victims of their right to appear at sentencing hearings, their right to make a statement to the Court, the right to restitution and/or civil recovery for losses, and the right to review the recommendation of the probation officer. All efforts are to be made to coordinate with the District Attorney's Victim Witness program to secure services as deemed appropriate.

Given the general rights of crime victims, there is an inherent right to certain information relating to the offense and its adjudication. Thus, crime victims may be given the address of probationers if their interest is to pursue civil litigation. The probation officer handling the respective case should carefully screen such requests. The crime victim may be furnished with dispositional information regarding a case if it has impact on restitution or any potential danger that he or she may face.

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#### **605.8 RELEASE OF INFORMATION DURING TELEPHONE CALLS**

Confidential information should not be released over the telephone unless the the caller has the need to know and the right to know. Employees who receive telephone calls asking about a person's probation status should transfer the call to the assigned officer or Supervisor to verify the caller's identity and need and right to know.

#### **605.9 RELEASE OF INFORMATION - DUTY TO WARN**

An officer who learns of a credible threat of violence made by a probationer under this Department's supervision and directed towards a foreseeable and identifiable victim or group of victims, must document the date, circumstances and substance of the threat, and report the threat immediately to the officer's Supervisor and the Chief Probation Officer or designee for consideration of further action by the Department.. If the Department believes there is an imminent threat of harm to a specific individual or group of individuals based on the probationer's threat, the Department in consultation with the Office of County Counsel shall determine the need to report the threat to the relevant law enforcement agencies and attempt to warn the intended victims of the threat.

#### **605.10 RELEASE OF INFORMATION WITH A SIGNED WAIVER**

A probationer or former probationer's Criminal History may be released when the probationer or former probationer has signed a waiver designating the release of his or her criminal record and/ or probation status to a specific person or entity **and** where such release would assist in furthering the rehabilitation of the probationer or former probationer.

A military recruiter is not an authorized release entity according to the Attorney General; thus, a signed release from the probationer or former probationer is required to furnish such information.

An employment, job training, or educational program is not necessarily an authorized release entity according to the Attorney General; thus, a signed release from the probationer or former probationer is required to furnish such information.

#### **605.11 RELEASED RECORDS TO BE MARKED**

Each page of any written record released pursuant to this policy should be stamped in a colored ink or otherwise marked to indicate the Department's name and to whom the record was released.

Each audio/video recording released should include the Department's name and to whom the record was released.

#### **605.12 SEALED RECORD ORDERS**

Sealed record orders received by the Department shall be reviewed for appropriate action by the Custodian of Records. The Custodian of Records shall seal such records as ordered by the court. Records may include but are not limited to a record of arrest, investigation, detention, or conviction. Once the record is sealed, members shall respond to any inquiry as though the record did not exist. (Pen. Code § 851.8; W & I Code § 781.)

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When an arrest record is sealed pursuant to Penal Code section 851.87, Penal Code section 851.90, Penal Code section 851.91, Penal Code section 1000.4, or Penal Code section 1001.9, the Custodian of Records shall ensure that the required notations on local summary criminal history information and police investigative reports are made. Sealed records may be disclosed or used as authorized by Penal Code section 851.92.

### **605.13 SECURITY BREACHES**

The Custodian of Records shall ensure notice is given anytime there is a reasonable belief an unauthorized person has acquired either unencrypted personal identifying information or encrypted personal information along with the encryption key or security credential stored in any Department information system. (Civ. Code § 1798.29.)

Notice shall be given as soon as reasonably practicable to all individuals whose information may have been acquired. The notification may be delayed if the Department determines that notification will impede a criminal investigation or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

For the purposes of this requirement, personal identifying information includes an individual's first name or first initial and last name in combination with any one or more of the following:

- Social Security number
- Driver license number, California identification card number, tax identification number, passport number, military identification number, or other unique identification number issued on a government document commonly used to verify the identity of a specific individual
- Account number or credit or debit card number, in combination with any required security code, access code or password that would permit access to an individual's financial account
- Medical information
- Health insurance information
- A username or email address, in combination with a password or security question and answer that permits access to an online account
- Information or data collected by Automated License Plate Reader (ALPR) technology
- Unique biometric data

#### **605.13.1 FORM OF NOTICE**

- (a) The notice shall be written in plain language, be consistent with the format provided in Civil Code section 1798.29 and include, to the extent possible, the following:

1. The date of the notice.
2. Name and contact information for the Department.



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3. A list of the types of personal information that were or are reasonably believed to have been acquired.
4. The estimated date or date range within which the security breach occurred.
5. Whether the notification was delayed as a result of a law enforcement investigation.
6. A general description of the security breach.
7. The toll-free telephone numbers and addresses of the major credit reporting agencies, if the breach exposed a Social Security number or a driver license or California identification card number.

b. The notice may also include information about what the Department has done to protect individuals whose information has been breached and may include information on steps that the person whose information has been breached may take to protect him/herself. (Civ. Code § 1798.29.)

c. When a breach involves an online account, and only a username or email address in combination with either a password or security question and answer that would permit access to an online account, and no other personal information has been breached. (Civ. Code § 1798.29)

1. Notification may be provided electronically or in another form directing the person to promptly change either his/her password or security question and answer, as applicable, or to take other appropriate steps to protect the online account with the Department in addition to any other online accounts for which the person uses the same username or email address and password or security question and answer.

2. When the breach involves an email address that was furnished by the Department, notification of the breach should not be sent to that email address but should instead be made by another appropriate medium as prescribed by Civil Code section 1798.29.

### 605.13.2 MANNER OF NOTICE

(a) Notice may be provided by one of the following methods (Civ. Code § 1798.29):

1. Written notice.
2. Electronic notice if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in 15 USC section 7001.
3. Substitute notice if the cost of providing notice would exceed \$250,000, the number of individuals exceeds 500,000 or the Department does not have sufficient contact information. Substitute notice shall consist of all of the following:
  - (a) Email notice when the Department has an email address for the subject person.
  - (b) Conspicuous posting of the notice on the Department's webpage for a minimum of 30 days.

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4. Notification to major statewide media and the California Information Security Office within the California Department of Technology.
- (b) If a single breach requires the Department to notify more than 500 California residents, the Department shall electronically submit a sample copy of the notification, excluding any personally identifiable information, to the Attorney General.

### **605.14 RELEASE OF AUDIO OR VIDEO RECORDINGS RELATED TO CRITICAL INCIDENTS**

Video and audio recordings related to critical incidents shall be released upon a proper public record request and subject to delayed release, redaction, and other release restrictions in accordance with Government Code section 6254(f)(4).

For purposes of this section, a video or audio recording relates to a critical incident if it depicts an incident involving the discharge of a firearm at a person by an officer, or depicts an incident in which the use of force by an officer against a person resulted in death or in great bodily injury. (as defined by Pen. Code § 243(f)(4)) (Gov. Code § 6254(f)(4).)

The Custodian of Records shall work as appropriate with the Chief Probation Officer in consultation with County Counsel in determining what recordings, if any, may qualify for disclosure when a request for a recording is received and if the requested recording is subject to delay from disclosure, redaction, or other release restrictions.

#### **605.14.1 DELAY OF RELEASE**

Disclosure of critical incident recordings during active criminal or administrative investigations may be delayed as follows if disclosure would substantially interfere with the investigation, such as by endangering the safety of a witness or a confidential source:

- (a) Disclosure may be delayed up to 45 days from the date the Department knew or reasonably should have known about the incident.
- (b) Delay of disclosure may continue after the initial 45 days and up to one year if the Department demonstrates that disclosure would substantially interfere with the investigation.
- (c) Any delay of disclosure longer than one year must be supported by clear and convincing evidence that disclosure would substantially interfere with the investigation. (Gov. Code § 6254(f)(4).)

#### **605.14.2 NOTICE OF DELAY OF RELEASE**

When there is justification to delay disclosure of a recording, the Custodian of Records shall provide written notice to the requester as follows (Gov. Code § 6254(f)(4)):

1. During the initial 45 days, the Custodian of Records shall provide the requester with written notice of the specific basis for the determination that disclosure would substantially interfere with the investigation. The notice shall also include the estimated date for the disclosure.
2. When delay is continued after the initial 45 days, the Custodian of Records shall promptly provide the requester with written notice of the specific basis for the determination that the

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interest in preventing interference with an active investigation outweighs the public interest in the disclosure, and the estimated date for the disclosure. The Custodian of Records should work with the Chief Probation Officer in reassessing the decision to continue withholding a recording and notify the requester every 30 days.

Recordings withheld shall be disclosed promptly when the specific basis for withholding the recording is resolved.

### 605.14.3 REDACTION

If the Custodian of Records, in consultation with the Chief Probation Officer or authorized designee, determines that specific portions of the recording may violate the reasonable expectation of privacy of a person depicted in the recording, the Department should use redaction technology to redact portions of recordings made available for release.

If any portions of a recording are withheld to protect the reasonable expectation of privacy of a person depicted in the recording, the Custodian of Records shall provide in writing to the requester the specific basis for the expectation of privacy and the public interest served. (Gov. Code § 6254(f)(4).)

### 605.14.4 RECORDINGS WITHHELD FROM PUBLIC DISCLOSURE

Unless exempt from disclosure for other reasons set forth above, If the reasonable expectation of privacy of a person depicted in the recording cannot adequately be protected through redaction, and that interest outweighs the public interest in disclosure, the Department may withhold the recording from the public, except that the recording, either redacted or un-redacted, shall be disclosed promptly, upon request, to any of the following (Gov. Code § 6254(f)(4)):

- (a) The person in the recording whose privacy is to be protected, or his/her authorized representative.
- (b) If the person is a minor, the parent or legal guardian of the person whose privacy is to be protected.
- (c) If the person whose privacy is to be protected is deceased, an heir, beneficiary, designated immediate family member, or authorized legal representative of the deceased person whose privacy is to be protected.

If the Department determines that this disclosure would substantially interfere with an active criminal or administrative investigation, the Custodian of Records shall provide the requester with written notice of the specific basis for the determination and the estimated date of disclosure. (Gov. Code § 6254(f)(4).)

The Department may continue to delay release of the recording from the public for 45 days with extensions as provided in this policy. (Gov. Code § 6254(f)(4)(A).)