

Personnel Complaints

720.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of employees of the Yolo County Probation Department. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a Supervisor or any other employee, nor shall this policy apply to a criminal investigation.

720.1.1 PERSONNEL COMPLAINTS DEFINED

Personnel complaints consist of any allegation of misconduct or improper job performance against any Department employee that, if true, would constitute a violation of Department policy, federal, state or local law.

Inquiries about employee conduct which, even if true, would not qualify as a personnel complaint may be handled informally by a Department Supervisor and shall not be considered complaints.

This policy shall not apply to any counseling, instruction, informal verbal admonishment or other routine or unplanned contact of an employee in the normal course of duty, by a Supervisor or any other employee, nor shall this policy apply to an investigation concerned solely and directly with alleged criminal activities. (Govt. Code § 3303(i).)

Personnel Complaints shall be classified in one of the following categories:

Informal - A matter in which the complaining party is satisfied appropriate action has been taken by a Department Supervisor of rank greater than the accused employee. Informal complaints need not be documented on a personnel complaint form and the responsible Supervisor shall have the discretion to handle the complaint in any manner consistent with this policy.

Formal - A matter in which the complaining party requests further investigation or about which a Department Supervisor determines further action is warranted. Such complaints may be investigated by a Department Supervisor of rank greater than the accused employee or assigned to an internal affairs investigator by Management depending on the seriousness and complexity of the investigation.

Incomplete - A matter in which the complaining party either refuses to cooperate or becomes unavailable after diligent follow-up investigation. At the discretion of the assigned Supervisor or Management, such matters need not be documented as personnel complaints, but may be further investigated depending on the seriousness of the complaint and the availability of sufficient information.

720.2 POLICY

The Yolo County Probation Department takes seriously all complaints regarding the service provided by the Department and the conduct of its employees.. It is the policy of this Department to ensure the community can report misconduct without concern for reprisal or retaliation.

Yolo County Probation Department

Policy Manual

Personnel Complaints

The Department will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state and local law, municipal and county rules and the requirements of any collective bargaining agreements.

It is also the policy of this Department to ensure that the community can report misconduct without concern for reprisal or retaliation.

720.2.1 AVAILABILITY OF COMPLAINT FORMS

Civilian Complaint forms will be maintained at the Probation Department reception desk upon request and available on the Probation Department website.

720.2.2 SOURCE OF COMPLAINTS

- (a) A Department employee becoming aware of alleged misconduct shall immediately notify a Supervisor.
- (b) A Supervisor receiving a complaint from any source alleging misconduct of an employee which, if true, could result in disciplinary action shall advise Management.
- (c) Anonymous complaints and third party complaints should be accepted and investigated to the extent that sufficient information is provided.

720.2.3 ACCEPTANCE OF COMPLAINTS

A complaint may be filed in person, in writing, or by telephoning the Department. Although not required, every effort should be made to have the complainant appear in person. The following should be considered before taking a complaint:

- (a) Complaints shall not be prepared unless the alleged misconduct or job performance is of a nature which, if true, would constitute a violation of Department policy, federal, state or local law.
- (b) When a Supervisor determines that the reporting person is satisfied that their complaint required nothing more than an explanation regarding the proper/improper implementation of Department policy or procedure, a complaint need not be taken.
- (c) When the complainant is intoxicated to the point where his or her credibility appears to be unreliable, identifying information should be obtained and the person should be provided with a Personnel Complaint form.
- (d) Depending on the urgency and seriousness of the allegations involved, complaints from juveniles should generally be taken only with their parents or guardians present and after the parents or guardians have been informed of the circumstances prompting the complaint. Juveniles in custody at the Juvenile Detention Facility may file a complaint without a parent or guardian being present by submitting a grievance form to staff at the JDF. This grievance will be forwarded to the Juvenile Detention Facility Superintendent for appropriate investigation and follow-up.

Personnel Complaints

720.2.4 COMPLAINT DOCUMENTATION

Formal complaints of alleged misconduct shall be documented by a Supervisor on a Civilian Complaint form. The Supervisor shall ensure that the nature of the complaint is defined as clearly as possible.

A Supervisor may elect to document informal complaints as a Supervisor log entry.

When a Civilian Complaint form is completed in person, the complainant should legibly write a detailed narrative of his or her complaint. If circumstances indicate that this is not feasible, the complaint may be dictated to the receiving Supervisor. In an effort to ensure accuracy in any complaint, it is recommended that a recorded statement be obtained from the reporting party. A refusal by a party to be recorded shall not alone be grounds to refuse to accept a complaint. Whether handwritten or dictated, the complainant's signature should be obtained at the conclusion of the statement. The complainant should be provided with a copy of his or her own original complaint per Penal Code section 832.7.

720.3 SUPERVISOR RESPONSIBILITY

A Supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation. Moreover, Supervisors shall also maintain the ability to engage in the interrogation of an employee in the normal course of duty, counseling, instruction, or informal verbal admonishment, or other routine or unplanned contact. (Govt. Code§ 3303(i).)

In general, the primary responsibility for the investigation of a personnel complaint shall rest with the employee's immediate Supervisor. The Chief Probation Officer or authorized designee may, however, direct that another Supervisor or an internal affairs investigator investigate it. The Supervisor shall be responsible for the following:

- (a) A Supervisor receiving a formal complaint involving allegations of a potentially serious nature shall ensure that the Manager of the accused employee and Chief Probation Officer are notified as soon as practicable.
- (b) A Supervisor receiving or initiating any formal complaint shall ensure that a Personnel Complaint form has been completed as fully as possible. The original complaint form will then be directed to the Supervisor of the accused employee, who will take appropriate action or forward the complaint to Management for further action.
 1. During the preliminary investigation of any complaint, the Supervisor should make every reasonable effort to obtain names, addresses and telephone numbers of additional witnesses.
 2. Once immediate medical attention has been provided, photographs of alleged injuries as well as accessible areas of non-injury should be taken.
 3. In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a Supervisor shall orally report the matter to their Division Manager or Superintendent of the Juvenile Detention Facility depending on the accused employee's assignment, who will initiate appropriate action and advise the Chief Probation Officer

Yolo County Probation Department

Policy Manual

Personnel Complaints

- (c) A Supervisor dealing with an accused employee shall ensure that the procedural rights of the employee are followed pursuant to Government Code section 3303, et seq.
- (d) When the nature of a personnel complaint relates to sexual, racial, ethnic, or other forms of prohibited harassment or discrimination, the Supervisor receiving the complaint shall promptly contact the Department of Human Resources and the Chief Probation Officer for direction regarding their role in investigation and/or addressing the complaint.
- (e) Follow-up contact with the complainant should be made within 24 hours of the Department receiving the complaint.
- (f) If the matter is resolved and no further action is required, the Supervisor will note the resolution on a complaint form and forward the form to Management.

720.4 ASSIGNMENT TO ADMINISTRATIVE LEAVE

When a complaint of misconduct is of a serious nature or when the nature of the misconduct would impose an unreasonable risk to the Department, the employee, other employees or the public, the Chief Probation Officer or designee may assign the accused employee to inactive duty pending completion of the investigation or the filing of administrative charges.

720.4.1 ADMINISTRATIVE LEAVE AND/OR SEPARATION OF SERVICE

An employee placed on administrative leave may be subject to the following guidelines:

- (a) An employee placed on administrative leave shall continue to receive regular pay and benefits pending the imposition of any discipline.
- (b) An employee placed on administrative leave may be required by a Supervisor to relinquish any badge, Departmental identification, assigned weapon(s) and any other Departmental equipment.
- (c) An employee placed on administrative leave may be ordered to refrain from taking any action as a Departmental employee or in an official capacity. The employee shall be required to continue to comply with all policies and lawful orders of a Supervisor.
- (d) An employee placed on administrative leave may be temporarily reassigned to a different shift (generally normal business hours) during the pendency of the investigation and the employee may be required to remain available for contact at all times during such shift and report as ordered.
- (e) At such time as any employee placed on administrative leave is returned to full and regular duty, the employee shall be returned to their regularly assigned shift with all badges, identification card and other equipment returned.

At any time that an employee is placed on administrative leave and/or an employee is separated from the Yolo County Probation Department, and it is anticipated that the employee will be removing their personal and Departmental property from their assigned locker or other space for storage, that employee will be escorted by a Departmental Supervisor and/or staff designated by the Chief Probation Officer. The removal of such property will be conducted in the presence

Personnel Complaints

of a Departmental Supervisor and/or staff designated by the Chief Probation Officer, along with another Departmental staff person as a witness, and consistent with Department policy regarding administrative searches.

In the event that an armed officer is placed on administrative leave and/or separated from the Yolo County Probation Department, the Rangemaster and/or designee and another designated staff person will remove and retain the Departmental issued firearm from that armed officer. The officer will be provided a receipt for all Departmental property removed and retained.

* Reference: Departure Interview and Property Check List

720.5 ALLEGATIONS OF CRIMINAL CONDUCT

Where an employee of this Department is accused of potential criminal conduct, a separate administrative investigation may parallel a criminal investigation.

The Chief Probation Officer shall be notified as soon as practicable when an employee is formally accused of criminal conduct. In the event of serious criminal allegations, the Chief Probation Officer may request a criminal investigation by an outside law enforcement agency.

An employee accused of criminal conduct shall be provided with all rights and privileges afforded to a civilian.

Any law enforcement agency is authorized to release information concerning the arrest or detention of a peace officer, which has not led to a conviction; however, no disciplinary action, shall be taken against the accused employee based solely on an arrest or crime report. (Labor Code § 432.7(b).) An independent administrative investigation of the allegations in the report shall be conducted in accordance with Department policy.

720.6 ADMINISTRATIVE INVESTIGATIONS

Allegations of misconduct will be administratively investigated as follows.

720.6.1 ADMINISTRATIVE INVESTIGATION PROCEDURES

Whether conducted by a Supervisor or an assigned Internal Affairs Officer, all administrative investigations of public safety officers shall be conducted in accordance with the Public Safety Officers Procedural Bill of Rights Act. (POBRA) (Gov. Code §§ 3300, et. seq.) The following additional rules apply to all administrative investigations conducted by the Yolo County Probation Department:

A. Notice of the Nature of the Investigation

1. Prior to any interview, a subject employee shall be informed of the nature of the investigation; the name, rank and command of the officer in charge of the investigation; the names of the interviewing officers and all other persons to be present during the interview.
2. "Nature of the investigation" means, at a minimum, the date(s), time(s) and places the misconduct is alleged to have occurred; the name(s) of the complainant(s); any

Personnel Complaints

associated report numbers; the policy, rule, law or regulation the subject employee is alleged to have violated.

3. Notice to the subject employee of the nature of the investigation shall occur within a reasonable time before the interrogation to allow the subject employee meaningful time to consult with any representative the employee elects to have present at the interrogation. In cases where notice before the interrogation would risk the safety of involved parties or of evidence in the officer's control, the investigator may withhold notice until the scheduled interrogation.

B. Criminal Matters

1. In any administrative investigation that might incriminate the subject employee in a criminal matter, the employee shall be given an order to answer questions only after the employee has been given a "Lybarger advisement".

2. Before proceeding with any such interrogation, administrative investigators should consider the impact that compelling a statement from the subject employee may have on any related criminal investigation and should take reasonable steps to avoid creating any conflicts between the two related investigations. This may include conferring with the person in charge of the criminal investigation (e.g., discussion of processes, timing, implications).

3. No information or evidence administratively coerced from a member may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.

C. Recordings, Transcripts and Subsequent Interviews

1. The interviewer should record all interviews of subjects and witnesses. The subject officer also may record the interview.

2. If the officer has been previously interviewed, a copy of that recorded interview or a transcript thereof, if available, shall be provided to the member prior to any subsequent interview.

D. No "Huddling": In order to maintain the integrity of each individual's statement, involved members shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.

E. Brady Lists: No investigation shall be undertaken against any officer solely because the officer has been placed on a prosecutor's *Brady* list or the name of the officer may otherwise be subject to disclosure pursuant to *Brady v. Maryland*. However, an investigation may be based on the underlying acts or omissions for which the officer has been placed on a *Brady* list or may otherwise be subject to disclosure pursuant to *Brady v. Maryland* (Gov. Code § 3305.5).

Personnel Complaints

720.6.2 NOTICE TO COMPLAINANT OF INVESTIGATION STATUS

The employee supervising or conducting the investigation may provide the complainant with updates on the status of the investigation, upon request of the complainant. The Chief Probation Officer or designee, will notify the complainant of the final disposition when the investigation has been completed..

720.7 DISPOSITION OF PERSONNEL COMPLAINTS

Each allegation shall be classified with one of the following dispositions:

Unfounded - When the investigation discloses that the alleged act(s) did not occur or did not involve department personnel. Complaints which are determined to be frivolous will fall within the classification of unfounded. (Pen. Code § 832.5(c).)

Exonerated - When the investigation discloses that the alleged act occurred, but that the act was justified, lawful and/or proper.

Not Sustained - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the employee.

Sustained - When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

If the Probation Department determines a civilian complaint is false, the Chief Probation Officer or designee shall forward the results of its investigation to the Office of the District Attorney for prosecution. False complaints shall not be made part of a peace officer's personnel file.

If an investigation discloses misconduct or improper job performance which was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations.

720.8 COMPLETION OF INVESTIGATIONS

Every investigator or Supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation within one year from the date of discovery by an individual authorized to initiate an investigation. In the event that an investigation cannot be completed within one year of discovery, the assigned investigator or Supervisor shall ensure that an extension or delay is warranted within the exceptions set forth in Government Code sections 3304(d) or 3508.1. If the nature of the allegations dictate that confidentiality is necessary to maintain the integrity of the investigation, the involved employee(s) need not be notified of the pending investigation unless and until the employee is interviewed or formally charged within one year of discovery.

Government Code sections 3304(d) or 3508.1. If the nature of the allegations dictate that confidentiality is necessary to maintain the integrity of the investigation, the involved employee(s) need not be notified of the pending investigation unless and until the employee is interviewed or formally charged within one year of discovery.

Yolo County Probation Department

Policy Manual

Personnel Complaints

Upon completion, the investigator's report should be provided to the employee's Division Manager or Superintendent of the Juvenile Detention Facility depending on the employee's assignment. The Division Manager or Superintendent of the Juvenile Detention Facility may accept the report or refer it back to the investigator or Supervisor for further investigation.

Once the report has been deemed complete by the Division Manager or Superintendent of the Juvenile Detention Facility the report and a recommendation for specific discipline or no discipline will be made by the Division Manager or Superintendent of the Juvenile Detention Facility to the Chief Probation Officer.

Once received, the Chief Probation Officer may accept or modify the recommendation regarding disciplinary action contained in the report.

Within 30 days of the final review by the Chief Probation Officer, written notice of the findings shall be sent to the complaining party. This notice shall indicate the findings, however, will not disclose the amount of discipline, if any imposed. The complaining party should also be provided with a copy of his or her own original complaint. (Pen. Code § 832.7.)

Any complaining party who is not satisfied with the findings of the Department concerning their complaint may contact the Chief Probation Officer to discuss the matter further.

720.8.1 CONFIDENTIALITY OF PERSONNEL FILES

All investigations of personnel complaints, whether originating from a civilian or internally, shall be considered confidential peace officer personnel files. The contents of such files shall only be revealed to the involved employee or authorized personnel except pursuant to lawful process.

In the event that an accused employee (or the representative of such employee) knowingly makes false representations regarding any internal investigation and such false representations are published by an established medium of communication, the Department may disclose sufficient information from the employee's personnel file to refute such false representations. (Pen. Code § 832.7(e.))

All sustained civilian complaints shall be maintained for a period of at least five years. (Pen. Code § 832.5.) All internally initiated complaints shall be maintained at least two years. (Gov. Code § 34090 et seq.)

Sustained complaints shall be maintained in the employee's personnel file. Complaints which are unfounded, exonerated or not sustained shall be maintained by the office of the Chief Probation Officer apart from the employee's personnel file.