

The initial proposed regulations (noticed on January 24, 2025) are illustrated by single blue underline in their entirety because the text comprises new proposed regulations. Changes made after the 45-day comment period are illustrated by double underline red font for proposed additions and ~~double strikethrough light green font~~ for proposed deletions. Changes made after the first 15-day comment period are illustrated by bold underline purple font for additions and ~~bold strikethrough orange font~~ for proposed deletions.

CALIFORNIA DEPARTMENT OF JUSTICE
TITLE 11. LAW
DIVISION 1. ATTORNEY GENERAL
CHAPTER 2011. CALIFORNIA LAW ENFORCEMENT ACCOUNTABILITY
REFORM ACT

FINAL TEXT OF PROPOSED REGULATIONS

Article 1. Definitions

§ ~~999.300~~941. Definitions.

(a) An “Adjudicating Agency” means the Employing Agency or an Appropriate Oversight Agency that, following an investigation, determines whether a Subject has engaged in Covered Misconduct, subject to any administrative appeals taken pursuant to Sections 3304 and 3304.5 of the Government Code.

(b) To “Advocate” or “Advocacy” means to communicate, to at least one other person, any form of Support for a person, Organization, or concept.

(c) “Appropriate Oversight Agency” means a state or local government agency or entity that investigates or prosecutes, in the normal course of business, allegations that Peace Officers have engaged in misconduct, and which has authority to investigate Peace Officers employed by the Employing Agency.

~~(1) A federal agency that has asserted appropriate control over an Employing Agency pursuant to agreement or court order may serve as an Appropriate Oversight Agency but shall have discretion in its application of these regulations.~~

(d) To “Coordinate” or “Coordination” means to pursue an objective or goal by connecting, unifying, or transmitting communications between multiple groups, factions, or individuals.

(e) “Covered Complaint” means any statement received by an Employing Agency or any Investigating Agency in writing or orally, in person, or by any other means, whether with identification of the complainant or anonymously, that contains allegations of Covered Misconduct or contains facts supporting the possibility of Covered Misconduct regarding a Peace Officer employed by the Employing Agency, whether or not those allegations or facts have Sufficient Particularity to Investigate.

(1) “Internal Complaint” means any Covered Complaint made by an employee to their Employing Agency or the responsible Investigating Agency about a Peace Officer employed by the Employing Agency.

(2) “Public Complaint” means any Covered Complaint that is not an Internal Complaint.

(f) “Covered Misconduct” means Membership in a Hate Group, Participation in Any Hate Group Activity, or Advocacy of Public Expressions of Hate, occurring within the seven years preceding the report of any portion of the Covered Complaint to any government agency, and after the Subject has reached the age of 18.

(g) “Employing Agency” means any state or local agency or department in California that employs Peace Officers.

(h) To “Facilitate” or “Facilitation” means to provide any form of assistance toward the accomplishment of a plan or objective.

(i) “Findings” means the conclusions of an investigator or team of investigators from an Investigating Agency as to each of the following:

(1) Identification of each instance of Covered Misconduct either alleged in a Covered Complaint or discovered in the course of the investigation;

(2) For each instance of possible Covered Misconduct identified in subdivision (i)(1), a conclusion, supported by adequate evidence, of whether each element, as identified in Section 999.308949, has been established; or a conclusion, supported by adequate evidence, that any element cannot be established or has not been established following an investigation;

(3) All established facts, and evidence, supporting the conclusions in subdivision (i)(2);

(4) An accounting of all material evidence that is inconsistent with the conclusions in subdivision (i)(2).

(j) To “Further” means to Advocate, Coordinate, Facilitate, or Support.

(k) “Genocide” has the same definition as Section 13680, subdivision (a), of the Penal Code.

(l) “Hate Crime” has the same definition as Section 13680, subdivision (b), of the Penal Code.

(m) “Hate Group” has the same definition as Section 13680, subdivision (c), of the Penal Code.

(n) “Investigating Agency” means an Employing Agency or Appropriate Oversight Agency with responsibility for the assessment and investigation of some or all Covered Complaints involving the Employing Agency’s Peace Officers.

(1) “Investigative Unit” is the component of an Investigating Agency with responsibility for the assessment and investigation of a Covered Complaint following receipt of the Covered Complaint.

(o) “Membership in a Hate Group” has the same definition as Section 13680, subdivision (d), of the Penal Code.

(p) “Organization” means a group of two or more people that bears ~~one or more~~ at least one of the following traits:

(1) A formal or informal name for the group used by two or more constituent individuals;

(2) Periodic meetings of two or more constituent individuals, whether in person, online, or by any other means;

(3) The maintenance by any constituent individual of a list of some or all constituent individuals; or

(4) The maintenance of a meeting site, whether physical or virtual, used by two or more constituent individuals.

(q) “Participation in Any Hate Group Activity” has the same definition as Section 13680, subdivision (e), of the Penal Code.

(r) “Peace Officer” has the same definition as Section 13680, subdivision (f), of the Penal Code.

(s) “Public Expression of Hate” has the same definition as Section 13680, subdivision (g), of the Penal Code.

(t) “Sufficient Particularity to Investigate” means the Covered Complaint includes any detail that indicates further investigative activities may be reasonably calculated to prove or disprove any material allegations in that complaint.

(u) “Subject” means a Peace Officer about whom a Covered Complaint was made, or about whom evidence has been discovered in the course of an investigation indicating a likelihood of Covered Misconduct.

(v) To “Support” means to provide any form of encouragement, agreement, or assistance to a person, Organization, concept, plan, or objective. Support includes, without limitation, financial support; enrollment as a member of an Organization; public association of one’s name or identity with any person, Organization, concept, plan, or objective; or providing labor to any person, Organization, concept, plan, or objective.

(w) To “Sustain” or “Sustained” has the same definition as Section 13680, subdivision (h), of the Penal Code.

Note: Authority cited: Section 13682, Penal Code. Reference: Sections 13680 and 13682, Penal Code.

Article 2. Investigations

§ ~~999.301~~1942. Responsibility.

(a) Within six months of the effective date of ~~this~~ these regulations, every Employing Agency shall develop and implement policies identifying an Investigating Agency or Agencies and an Adjudicating Agency or Agencies with responsibility for the investigation and adjudication, respectively, of Covered Complaints involving the Employing Agency’s Peace Officers. The policies shall be developed in consultation with all agencies named in each respective policy, and ~~each agency assigned responsibility must consent to such responsibility.~~ A copy of each policy shall be shared with all agencies named in that policy and with any other Appropriate Oversight Agencies in the Employing Agency’s jurisdiction. The Employing Agency may identify itself as an Investigating Agency, and may identify itself as an Adjudicating Agency.

(b) Responsibility for the investigation and adjudication of Covered Complaints ~~shall~~may be assigned to one agency or allocated among multiple agencies based on available resources, the nature of the allegations (e.g., implicating criminal allegations or not), avoidance of conflict of interest, or other relevant factors. Any policies developed pursuant to this section shall be consistent with all other provisions within these regulations, and subject to applicable law.

(c) An alternate Investigating Agency must be identified with respect to circumstances in which the primary Investigating Agency is unable to comply with Section 999.306947, subdivisions (a), and (b). The alternate Investigating Agency may be in a different jurisdiction than the Employing Agency if all involved agencies consent.

~~(d) All policies and procedures implemented pursuant to this Section are subject to applicable state, county, and municipal law or other directive from a superior body. Implementation is not subject to collective bargaining with a personnel union or any other private agreement.~~

(d) All policies and procedures implemented pursuant to this Section are subject to applicable state, county, and municipal law or other directive from a superior body. Implementation is not subject to collective bargaining with a personnel union or any other private agreement.

~~(e)~~ The assignment of an Adjudicating Agency shall not affect any rights to administrative appeal pursuant to Sections 3304 and 3304.5 of the Government Code.

Note: Authority cited: Section 13682, Penal Code. Reference: Section 13682, Penal Code.

§ 999.302943. Public Complaints.

(a) All Employing Agencies and Investigating Agencies shall accept Public Complaints involving Peace Officers of any Employing Agency. That procedure may be part of the civilian complaint procedure required by Section 832.5 of the Penal Code, provided that the civilian complaint procedure complies with these regulations. ~~All Employing Agencies and Investigating Agencies shall designate intake coordinators responsible for overseeing acceptance of Public Complaints.~~

(b) Public Complaints shall be accepted by any mode of communication, including, without limitation, in writing, by written complaint form, by e-mail, by U.S. mail, by internet complaint form, by telephone, orally in person, or by sign language in person.

(c) Anonymous Public Complaints shall be accepted.

(d) No written form or internet form used to accept Public Complaints, and no physical facility in which Public Complaints may be accepted in person, shall bear any of the following:

(1) An advisement of penalties for false statements;

(2) Any advisement that statements are made under penalty of perjury;

- (3) Any imposition of conditions upon the complainant, such as a requirement that a complainant contact an investigator within a specified time frame; or
- (4) Any other language that could reasonably be construed as discouraging a complainant from submitting a Public Complaint or participating in any subsequent investigation.
- (e) Policies regarding acceptance of Public Complaints shall comply with all applicable laws concerning language access and disability accessibility.
- (f) Investigating Agencies and other Employing Agencies shall ensure that the home page of each agency's website contains a prominent link explaining the Public Complaint process and permitting online submission of a Public Complaint or providing a link to the relevant Investigating Agency. **At a minimum, the information provided will include the content of the policy described in Section 999.301, subdivision (a), and contact information for the submission of a Public Complaint by each of the following means: in person, online, by mail, and by phone.** The information provided on the website shall include language providing that retaliation for making a Public Complaint or cooperating in a Covered Complaint investigation is prohibited.
- (g) The complaint procedure shall designate a process by which the agency, ~~through a designated intake coordinator,~~ shall log all Public Complaints within one business day of receipt. The log shall include date of receipt, name of the Subject of the Public Complaint, and the Public Complaint's general subject matter.
- (h) Within one business day of receipt, the ~~intake coordinator shall refer the~~ Public Complaint **shall be referred** to the Investigative Unit of the appropriate Investigating Agency.
- (i) If ~~the intake coordinator~~ **personnel responsible for accepting a complaint** cannot determine whether ~~a complaint~~ **it** is a Covered Complaint, ~~the intake coordinator~~ **they** shall log the complaint and refer it to the Investigative Unit.

Note: Authority cited: Section 13682, Penal Code. Reference: Section 13682, Penal Code.

§ 999.303**944**. Internal Complaints.

- (a) Each Employing Agency and each Investigating Agency shall accept Internal Complaints by any personnel and refer such Internal Complaints to an appropriate investigator, **consistent with Section 999.301, subdivision (a), and Section 999.306, subdivision (a).**

(b) Each Employing Agency and each Investigating Agency shall accept anonymous Internal Complaints.

~~(c) Each Employing Agency and each Investigating Agency shall develop and implement a policy requiring all personnel who are aware that any Peace Officer has engaged in or has likely engaged in Covered Misconduct to make an Internal Complaint. The policy need not be specific to reporting Covered Misconduct so long as it is broad enough to require reporting of all Covered Misconduct. The policy shall also provide that retaliation against any personnel for making an Internal Complaint is subject to punishment up to termination.~~

(c) ~~(d)~~ Each Employing Agency and each Investigating Agency shall adopt a procedure for the logging and referral of Internal Complaints consistent with Section 999.302943, subdivisions (g), (h), (i).

Note: Authority cited: Section 13682, Penal Code. Reference: Section 13682, Penal Code.

§ 999.304945. Receipt of Complaints by Appropriate Oversight Agencies Not Designated as Investigating Agencies.

(a) If an Appropriate Oversight Agency that is not designated as an Investigating Agency pursuant to Section 999.301942 receives from any source a Covered Complaint concerning Peace Officers of an Employing Agency within its jurisdiction, the oversight agency ~~shall~~ **may** investigate the complaint itself or refer it to another Appropriate Oversight Agency if the following conditions are met:

(1) The agency has oversight responsibility for the Employing Agency based on another source of law; and

(2) The agency determines that disclosure of the complaint to the Investigating Agency may compromise the investigation thereof or put any person at risk of harm.

(b) If the above conditions are met, ~~during the pendency of the investigation~~ **prior to the completion of the investigation**, the agency receiving the complaint and any oversight agency to which the complaint is referred are not required to notify the Employing Agency or Investigating Agency designated pursuant to Section 999.301942 of the existence or investigation of the complaint. ~~The agency receiving the complaint and any oversight agency to which the complaint is referred are permitted but not required to disclose the existence of the~~

complaint and investigation to the Employing Agency or Investigating Agency if the investigation results in Findings that the alleged misconduct has not been established.

(c) ~~The~~ If the agency receiving the complaint or any oversight agency to which the complaint is referred ~~may adjudicate the complaint if it determines~~ has reason to believe that the Adjudicating Agency designated pursuant to Section 999.301942 has a conflict of interest or is otherwise incapable of conducting an unbiased adjudication, then, simultaneously with transmission of Findings to the Adjudicating Agency, a copy of the Findings shall be submitted to the Department of Justice with all information forming the basis of the agency's concerns.

(d) For purposes of the six-month time period provided in Section 999.306947, subdivision (i), ~~the agency initially receiving the complaint shall serve as the Investigating Agency~~ receipt of a Covered Complaint by an agency conducting an investigation pursuant to this Section is equivalent to receipt of a Covered Complaint by an Investigating Agency.

(e) In conducting an investigation ~~or adjudication~~, an Appropriate Oversight Agency not designated as an Investigating Agency ~~or Adjudicating Agency, respectively~~, agrees to be bound by Sections 999.306947 through 999.310951, 999.311952, subdivision (a), and 999.312953, subdivision (b), of these regulations ~~and shall be authorized to depart from existing policy, agreement, or other source of law where necessary to comply with these regulations.~~

~~(f) The provisions of subdivisions (a) through (e) of this Section are subject to applicable state, county, and municipal law or other directive from a superior body. The provisions of this Section are not subject to collective bargaining with a personnel union or any other private agreement.~~

(f) The provisions of subdivisions (a) through (c) of this Section are subject to applicable state, county, and municipal law or other directive from a superior body. The provisions of this Section are not subject to collective bargaining with a personnel union or any other private agreement.

Note: Authority cited: Section 13682, Penal Code. Reference: Section 13682, Penal Code.

§ 999.305946. Receipt of Complaints Outside Agency's Jurisdiction.

If any Employing Agency, or other agency designated as an Investigating Agency pursuant to Section 999.301942, receives a Covered Complaint involving a Subject outside of its jurisdiction, the agency must accept the complaint pursuant to its procedures and Section

999.302~~943~~, and within three days transmit all documentation related to the Covered Complaint to the appropriate Investigating Agency.

Note: Authority cited: Section 13682, Penal Code. Reference: Section 13682, Penal Code.

§ 999.306~~947~~. Investigations.

(a) Upon referral to the Investigative Unit, the Covered Complaint shall be assigned to an investigator or team of investigators. Subject to subdivision (b), each assigned investigator:

(1) Shall hold a higher rank than the Subject of the Covered Complaint, if the investigator is a member of the Subject's Employing Agency;

(2) Shall not be the immediate supervisor of the Subject of the Covered Complaint, unless the Subject's immediate supervisor is the highest-ranking member of the Subject's chain of command;

(3) Shall not have any actual or perceived conflicts of interests, including a reasonable likelihood that the investigator may be a potential witness or that other actual or perceived conflicts may arise; ~~and~~

(4) Shall be subject to supervision consistent with agency policy; ~~and~~

(5) Shall have undergone an appropriate background check.

(b) If it is impossible or impracticable to comply with subdivision (a) due to the Subject's rank, conflicts of interest, the Investigating Agency's unforeseen resource limitations, or any other ~~impediment to investigation~~~~reason~~, the Investigating Agency shall refer the matter to the alternate Investigating Agency identified pursuant to Section 999.301~~942~~, subdivision (c) within five days of referral to the Investigative Unit.

(1) If referral to the alternate Investigating Agency is impossible or impractical, the Investigating Agency ~~shall~~~~may~~ request that the California Department of Justice accept a referral of the matter. The request must explain why the Investigating Agency and alternate Investigating Agency are unable to conduct the investigation.

(2) If it accepts the referral, the California Department of Justice shall ~~have discretion over the handling of the investigation and adjudication of the matter, including by referral to another agency~~ be bound by these regulations, except that it shall have discretion to refer the matter to an Appropriate Oversight Agency.

(3) If the California Department of Justice declines to accept the referral or does not respond to the Investigating Agency's request within 30 days, the Investigating Agency shall retain responsibility for investigating the matter. The Investigating Agency shall be permitted to refer the matter to another Appropriate Oversight Agency **not covered by outside of** the policies **and procedures** in place pursuant to Section 999.301**942**, with the consent of the referee agency. The Investigating Agency shall take all reasonable measures to mitigate conflicts of interest or undue pressure on personnel involved with the investigation.

(4) The time during which a request for referral is pending with the California Department of Justice shall not count toward the time limit specified in Section 999.306**947**, subdivision (i).

(c) The investigator assigned shall assess, within ten days of the Investigating Agency's receipt of the Covered Complaint, whether the Covered Complaint provides Sufficient Particularity to Investigate. In determining whether the Covered Complaint contains Sufficient Particularity to Investigate, the following, by themselves, are not sufficient to decline investigation:

(1) Failure to identify a Hate Group by name, where Membership in a Hate Group, Participation in Any Hate Group Activity, or Advocacy of Public Expressions of Hate are alleged.

(2) Failure to specifically allege Membership in a Hate Group, Participation in Any Hate Group Activity, or Advocacy of Public Expressions of Hate, where the content of the complaint otherwise suggests the Subject officer may have Membership in a Hate Group, has Participated in Any Hate Group Activity, or has engaged in Public Expressions of Hate.

(d) In assessing the Covered Complaint, the investigator shall determine:

(1) Whether the alleged misconduct took place within seven years preceding the communication of any portion of the underlying allegations to any government agency; or whether the nature of the alleged misconduct is such that further investigation is warranted regarding when the alleged misconduct took place; and

(2) Whether the alleged misconduct took place after the Subject was 18 years of age or that the nature of the alleged misconduct is such that further investigation is warranted regarding the age of the Subject at the time of the alleged misconduct.

(e) If the investigator concludes that the Covered Complaint, as received, lacks Sufficient Particularity to Investigate or lacks sufficient detail regarding when the misconduct allegedly occurred or the age of the Subject at the time, the investigator shall take all reasonable steps to contact the complainant, if possible, to ascertain whether the complainant has additional information that could provide the necessary Sufficient Particularity to Investigate. The initial assessment period may be extended up to a total of 30 days for the purpose of contacting or communicating with the complainant or other identified witnesses, or receiving further information relevant to the Covered Complaint.

(f) If the investigator, having taken the steps outlined in subdivision (e), determines that the Covered Complaint still does not provide Sufficient Particularity to Investigate, that the misconduct occurred more than seven years preceding communication of any portion of the underlying allegations to a government agency, or that the misconduct occurred when the Subject was less than 18 years of age, the investigator may close the investigation after documenting their conclusions, reasoning, and efforts to obtain additional information. Any such determination shall be reviewed by the investigator's supervisor. The Investigating Agency shall maintain documentation regarding the Covered Complaint in a file, which shall include all evidence obtained by the investigator, the investigatory steps taken, and the investigator's conclusions and reasoning.

(g) The following circumstances, standing alone, shall not be grounds for the suspension or termination of the investigation of a Covered Complaint, even if it has not yet been determined whether there exists Sufficient Particularity to Investigate:

(1) Withdrawal of a Covered Complaint by a complainant;

(2) The voluntary or involuntary separation of a Subject from their Employing Agency;

or

(3) The discontinuation of a Subject's status as a Peace Officer.

(h) Pursuant to Penal Code section 13682, subdivision (a), ~~Notwithstanding any other state or local law, regulation, or memorandum of understanding, including Section 19635 of the Government Code, and California Code of Regulations, title 15, section 3417, subdivision (a),~~ if the investigator determines that the complainant has provided Sufficient Particularity to Investigate and that the misconduct at issue may have occurred within seven years of communication of any portion of the underlying allegations to a government agency, and after

the Subject reached the age of 18, the investigator shall immediately open an investigation to determine whether the Subject of the Covered Complaint has engaged in the alleged Covered Misconduct.

(i) Any investigation conducted pursuant to this section shall be completed as quickly as practicable, but no later than six months after receipt of the Covered Complaint by the Investigating Agency, unless the Investigating Agency identifies and documents needs specific to the investigation warranting an extension of time (such as complexity, number of subjects, or unforeseen developments warranting further investigation), or because the Adjudicating Agency has requested further investigation. Under these circumstances, the deadline to complete the investigation may be extended up to three months at a time. Pursuant to Penal Code section 13682, subdivisions (a) and (b), ~~Notwithstanding Government Code section 3304, subdivision (d), or any other state or local law, regulation, or memorandum of understanding,~~ the length of the investigation shall not be considered a mitigating factor in the adjudication of the matter and shall not affect the Employing Agency's obligation to remove from appointment as a Peace Officer any Peace Officer against whom a Covered Complaint is Sustained.

(j) The investigator shall identify, collect, and consider all relevant evidence, including, without limitation, social media content and audio- or video-recordings.

(k) The investigator shall take all reasonable steps to locate and interview all witnesses, including civilian witnesses. Interviews shall be video-recorded or audio-recorded.

(l) Pursuant to Penal Code section 13682, subdivision (a), ~~No statute, regulation, policy, contract, or general directive shall be interpreted to bind or restrict~~ the Investigating Agency shall not be restricted with respect to any of the following aspects of the investigation, except as required by the United States or California Constitutions:

(1) The length of notice provided to a Subject or witness, of any aspect of an upcoming interview or an interrogation. The length of notice given shall take into account all relevant factors including integrity of the investigation, potential spoliation of evidence, other obstruction of the investigation, and the ability of a Subject to secure the assistance of a representative.

(2) The duration of an interview or interrogation.

(3) The number of questioners or other participants in an interrogation or investigation, where the investigator determines that it is necessary to include subject-matter experts.

(4) The use of reasonable measures to avoid or minimize obstruction by limiting from participation a Subject's or witness's representative in an interview or investigation.

(5) The provision to the Subject or any witness of any evidence, including transcripts or recordings of interviews or interrogations (including by permitting a subject or witness to create transcripts or recordings), prior to the conclusion of the investigation.

(6) The discretion of an investigator or finder of fact to draw a negative inference based on the refusal of a Subject to answer questions or provide any other evidence requested for a legitimate investigative purpose.

(m) Where an investigation involves allegations of both Covered Misconduct and other misconduct that is related to the Covered Misconduct, the provisions of subdivision (l) shall not apply to interrogations or other investigative activities that do not involve Covered Misconduct.

~~(m)(n)~~ For each investigation, and without being bound by any other policy, the Investigating Agency shall determine whether the investigation should run concurrently and parallel to any related criminal investigation or instead should be paused until a related criminal investigation has concluded. This determination should take into account potential loss or degradation of evidence caused by extended passage of time, and appropriate efforts should be made to protect the integrity of parallel criminal proceedings. If the Investigating Agency determines that the investigation of a Covered Complaint should be paused due to a related criminal investigation, the six-month time period provided in Section 999.306947, subdivision (i), is suspended until the Investigating Agency determines that its investigation can recommence without prejudice to the criminal investigation, and in any event no later than the final resolution of the criminal matter. The Investigating Agency shall not implement any policy that prohibits concurrent investigations in all instances.

~~(n)~~ (o) An investigation shall be deemed concluded when:

(1) The investigator has sufficient evidence to support Findings; ~~or~~

(2) The investigator has sufficient evidence to determine that any applicable element identified in Section 999.308949 cannot be established; or

(3) The investigator has been unable to identify evidence sufficient to establish any applicable element in Section 999.308949.

~~(e)~~ **(p)** Once the investigator has concluded the investigation, they shall ensure that the investigative file includes, at a minimum:

- (1) A case log that tracks the progress of the investigation, including a chronology of investigative steps taken, the individuals involved, and the date and time the step was taken;
- (2) A record of all evidence collected, including, if relied upon, relevant complaints received, interview transcripts and social media documentation;
- (3) A narrative or written summary that describes the core actions taken by the investigator; and
- (4) Findings.

~~(p)~~ **(q)** Upon conclusion of the investigation, the investigative file shall be transmitted to the Adjudicating Agency, or to the adjudicating official if the Investigating Agency and Adjudicating Agency are the same.

Note: Authority cited: Section 13682, Penal Code. Reference: Section 13682, Penal Code; Section 3304, Government Code; **Title 15, Section 3417, California Code of Regulations.**

Article 3. Adjudication

§ **999.307948**. Adjudication.

(a) Adjudication commences with receipt of the Findings by the Adjudicating Agency. The agency shall review the Findings in order to determine whether the Subject engaged in Covered Misconduct.

(b) If the Adjudicating Agency concludes that further investigation is necessary, the agency ~~shall~~**may** return the case to the Investigating Agency or Investigative Unit for this purpose. The original Findings and any supplemental Findings shall form the evidentiary basis of the Adjudicating Agency's determination as to whether the Subject engaged in Covered Misconduct.

(c) The Adjudicating Agency's determination must be in writing and ~~concur with, or provide reasons for rejection of, the conclusions as to each element of each instance of Covered Misconduct discussed in the Findings~~ **concur with, or provide reasons for rejection of, the conclusions as to each element of each instance of Covered Misconduct discussed in the Findings** ~~provide a sufficient basis for concurrence with or rejection of each element of the~~

Findings: At or before such time that the Adjudicating Agency or Employing Agency communicates to the Subject the agency's intent to discipline the Subject, the agency shall provide the Subject with a copy of the investigative file, including any additions made at the request of the Adjudicating Agency or official.

(d) The Adjudicating Agency must consider all Covered Misconduct identified in the Findings, regardless of whether such misconduct was included in the Covered Complaint.

(e) The Adjudicating Agency's determination is subject to notice and pre-removal procedures required under state and local law, including Section 19574 of the Government Code, and administrative appeal by any party pursuant to Sections 3304 and 3304.5 of the Government Code.

(f) If the Adjudicating Agency determines, ~~following~~ **subject to** all applicable administrative appeals, that the Subject engaged in Covered Misconduct, the Subject shall be removed from appointment as a Peace Officer.

(g) As provided by applicable law or policy, the Subject of a Sustained Covered Complaint may be subject to further discipline beyond removal from appointment as a Peace Officer in connection with the conduct underlying or related to the Sustained Covered Complaint.

Note: Authority cited: Section 13682, Penal Code. Reference: Section 13682, Penal Code.

§ ~~999.308~~**949**. Elements of Covered Misconduct.

(a) In order to Sustain a Covered Complaint that a Subject has engaged in Membership in a Hate Group, each of the following elements must be established by ~~a preponderance of the~~ **clear and convincing evidence**:

(1) Within seven years preceding the communication of any portion of the allegations underlying the Covered Complaint to any government agency and while the Subject was 18 years or older, the Subject was a member, or held themselves out as a member, of an Organization;

(2) That Organization was a Hate Group at the time of the Subject's actual or putative membership;

(3) A majority of members of the Organization, or the leadership of that Organization, intended to Further the commission of Genocide or Hate Crimes by any members of the Organization; and

(4) At the time of actual or putative membership, the Subject intended to Further the commission of Genocide or Hate Crimes by any members of the Organization.

(b) For a complaint of Participation in Any Hate Group Activity to be Sustained, each of the following elements must be established by ~~a preponderance of the~~ **clear and convincing evidence**:

(1) The Subject had a relationship with an Organization or at least one member of that Organization;

(2) That Organization was a Hate Group at the time of the relationship;

(3) Within seven years preceding the communication of any portion of the allegations underlying the Covered Complaint to any government agency, the Organization or at least one member of the Organization committed a Hate Crime or attempted to commit a Hate Crime; and

(4) The Subject was actively and directly involved in, Facilitated, or Coordinated the commission or attempted commission of that Hate Crime while the Subject was 18 or older.

(c) For a complaint of Public Expression of Hate to be Sustained, each of the following elements must be established by ~~a preponderance of the~~ **clear and convincing evidence**:

(1) Within seven years preceding the communication of any portion of the allegations underlying the Covered Complaint to any government agency, and at the time of which the Subject was 18 years or older, the Subject made a statement or expression;

(2) The statement or expression was made to another person or persons, verbally or in writing, by any means including statements or expressions made on the internet in any way that permits it to be accessed by at least one other person; and

(3) The statement or expression explicitly Advocated for, explicitly Supported, or explicitly threatened to commit Genocide or any Hate Crime, or explicitly Advocated for or explicitly Supported any Hate Group, with knowledge of the Hate Group's Advocacy for, threats of, or practice of Genocide or the commission of Hate Crimes.

Note: Authority cited: Section 13682, Penal Code. Reference: Sections 13680 and 13682, Penal Code.

§ 999.309~~950~~. Other Misconduct.

(a) The adjudication of Covered Misconduct may be combined with the adjudication of related offenses that are not Covered Misconduct.

(b) Where there is evidence to Sustain a charge of Covered Misconduct, the Employing Agency, Adjudicating Agency, or any other agency so empowered shall not enter into any agreement with the Subject to **withdraw the Charge of Covered Misconduct, including where such withdrawal is made in exchange for the Subject accepting discipline other than ~~adjudicate an alternate charge of misconduct for the purpose of administering discipline that does not include~~** removal from appointment as a Peace Officer.

Note: Authority cited: Section 13682, Penal Code. Reference: Section 13682, Penal Code.

§ 999.310~~951~~. ~~Serious Misconduct~~ Reporting to the Commission on Peace Officer Standards and Training.

~~(a) All instances of Covered Misconduct taking place during a Peace Officer's tenure with any Employing Agency and after January 1, 2023, constitute "serious misconduct" pursuant to Penal Code section 13510.8, subdivision (b)(5). The reporting provisions of Section 13510.9 of the Penal Code shall apply to allegations or Findings regarding Covered Misconduct.~~

~~(b) For Peace Officer appointments occurring on or after January 1, 2023, if the Peace Officer engaged in Covered Misconduct within seven years preceeding the date of application for employment as a Peace Officer and while the officer was 18 years of age or older, and failed to disclose all occurrences of Covered Misconduct in response to pre-employment inquiries, the Employing Agency shall refer the Peace Officer to the Commission on Peace Officer Standards and Training for decertification pursuant to Penal Code section 13510.8, subdivision (a)(3), and section 13510.9.~~ All events involving Covered Misconduct by a Peace Officer must be reported to the Commission on Peace Officer Standards and Training by the Investigating Agency and Adjudicating Agency according to the requirements of Section 13510.9 of the Penal Code.

Note: Authority cited: Section 13682, Penal Code. Reference: Section 13510.9 and 13682, Penal Code.

Article 4. General Provisions

§ 999.311952. Recordkeeping, Transparency, and Best Practices.

(a) Investigating Agencies shall retain all Covered Complaints and related materials, including, without limitation, any evidence, reports and Findings, for a period of no less than 5 years for records where there is no related Sustained Finding of Covered Misconduct and for not less than 15 years where there is a Sustained Finding of Covered Misconduct. A record shall not be destroyed while a request related to that record is being processed or while there is any pending process or litigation to determine whether the record is subject to release. All records retained pursuant to this provision shallmay be maintained either in the peace or custodial officer's general personnel file or in a separate file designated by the Employing Agency or Investigating Agency as provided by department or agency policy, in accordance with all applicable requirements of law.

(b) All policies required to be developed pursuant to these regulations shall be made available to the public, including through an internet link prominently displayed on the home page of the Employing Agency's and any other Investigating Agency's web site.

(c) Within six months of the effective date of these regulations,, all Investigating Agencies shall adopt best practices for investigations conducted pursuant to Penal Code section 13682, subdivision (a), and conduct said investigations accordingly. The best practices shall incorporate and be consistent with all relevant requirements set forth in these regulations.

(d) Investigating Agencies shall ensure that investigation procedures comply with all applicable privacy laws.

Note: Authority cited: Section 13682, Penal Code. Reference: Section 13682, Penal Code.

§ 999.312953. Audits.

(a) Investigating Agencies shall conduct quarterly internal audits of all Covered Complaints that they determined did not have Sufficient Particularity to Investigate and shall report the audit report and Findings to the agency's chief executive. Based on these audits, the Investigating

Agencies shall assess the effectiveness of the complaint process and enact revisions to policies, procedures, and training programs whenever necessary.

(b) Upon request from the Department of Justice, any Investigating Agency shall make available for inspection records of:

- (1) Any investigation or adjudication conducted pursuant to Penal Code section 13682;
- (2) Any audits undertaken pursuant subdivision (a); and
- (3) Any other aspect of implementation of Penal Code section 13682, including training, policies, or internal reviews.

Note: Authority cited: Section 13682, Penal Code. Reference: Section 13682, Penal Code.

§ 999.313954. Training.

(a) Investigating Agencies shall ensure that investigators assigned to investigate Covered Complaints receive training in conducting administrative investigations of Covered Complaints, including interview techniques, conducting social media reviews, and handling of electronic evidence. The training need not be specific to investigating Covered Misconduct so long as it is broad enough to address the needs of investigations involving Covered Misconduct.

(b) Training shall also be provided to ~~intake coordinators~~ **personnel responsible for accepting complaints** regarding the performance of their duties.

Note: Authority cited: Section 13682, Penal Code. Reference: Section 13682, Penal Code.

§ 999.314955. No Abrogation of Rights.

Sections 13680–13683 of the Penal Code, and these implementing regulations, shall not be interpreted to abrogate the right of any party to seek relief in a court of competent jurisdiction.

Note: Authority cited: Section 13682, Penal Code. Reference: Section 13682, Penal Code.