

Investigation and Prosecution

600.1 PURPOSE AND SCOPE

The purpose of this policy is to set guidelines and requirements pertaining to the handling and disposition of criminal and administrative investigations.

600.2 POLICY

It is the policy of the California Department of State Hospitals (DSH) to investigate crimes thoroughly and with due diligence, and to evaluate and prepare criminal cases for appropriate clearance or submission to a prosecutor.

600.3 INITIAL INVESTIGATION

600.3.1 OFFICER RESPONSIBILITIES

An officer responsible for an initial investigation shall complete no less than the following:

- (a) Make a preliminary determination of whether a crime has been committed by completing, at a minimum:
 - 1. An initial statement from any witnesses or complainants.
 - 2. A cursory examination for evidence.
- (b) If information indicates a crime has occurred, the officer shall:
 - 1. Preserve the scene and any evidence as required to complete the initial and follow-up investigation.
 - 2. Determine if additional investigative resources (e.g., investigators or scene processing) are necessary and request assistance as required.
 - 3. If assistance is warranted, or if the incident is not routine, notify a supervisor or the Watch Commander.
 - 4. Make reasonable attempts to locate, identify and interview all available victims, complainants, witnesses and suspects.
 - 5. Collect any evidence.
 - 6. Take any appropriate law enforcement action.
 - 7. Complete and submit the appropriate reports and documentation.
- (c) If the preliminary determination is that no crime occurred, determine what other action may be necessary, what other resources may be available, and advise the informant or complainant of this information.

600.3.2 NON-SWORN EMPLOYEE RESPONSIBILITIES

A professional staff employee assigned to any preliminary investigation is responsible for all investigative steps, except making any attempt to locate, contact or interview a suspect face-to-

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face or take any enforcement action. Shall an initial investigation indicate that those steps are required, the assistance of an officer shall be requested.

600.4 CUSTODIAL INTERROGATION REQUIREMENTS

Suspects who are in custody and subjected to an interrogation shall be given the *Miranda* warning, unless an exception applies. Interview or interrogation of a juvenile shall be in accordance with the Temporary Custody of Juveniles Policy. Officers shall refer to the Portable Audio/Video Recording Policy which requires the recording of interviews in circumstances not involving custodial interrogation.

600.4.1 AUDIO/VIDEO RECORDINGS

Any custodial interrogation of an individual who is suspected of having committed any violent felony offense shall be recorded (audio or video with audio as available) in its entirety. Regardless of where the interrogation occurs, every reasonable effort shall be made to secure functional recording equipment to accomplish such recordings.

Consideration shall also be given to recording a custodial interrogation, or any investigative interview, for any other offense when it is reasonable to believe it would be appropriate and beneficial to the investigation and is otherwise allowed by law.

No recording of a custodial interrogation shall be destroyed or altered without written authorization from the prosecuting attorney and the Investigation unit supervisor. Copies of recorded interrogations or interviews may be made in the same or a different format as the original recording, provided the copies are true, accurate and complete and are made only for authorized and legitimate law enforcement purposes.

Recordings shall not take the place of a thorough report and investigative interviews. Written statements from suspects shall continue to be obtained when applicable.

600.4.2 MANDATORY RECORDING OF ADULTS

Any custodial interrogation of an adult who is suspected of having committed any murder shall be recorded in its entirety. The recording shall be video with audio if reasonably feasible (Pen. Code § 859.5).

This recording is not mandatory when (Pen. Code § 859.5):

- (a) Recording is not feasible because of exigent circumstances that are later documented in a report.
- (b) The suspect refuses to have the interrogation recorded, including a refusal any time during the interrogation, and the refusal is documented in a report. If feasible, the refusal shall be electronically recorded.
- (c) The custodial interrogation occurred in another state by law enforcement officers of that state, unless the interrogation was conducted with the intent to avoid the requirements of Penal Code § 859.5.

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- (d) The interrogation occurs when no employee conducting the interrogation has a reason to believe that the individual may have committed murder. Continued custodial interrogation concerning that offense shall be electronically recorded if the interrogating employee develops a reason to believe the individual committed murder.
- (e) The interrogation would disclose the identity of a confidential informant or would jeopardize the safety of an officer, the individual being interrogated or another individual. Such circumstances shall be documented in a report.
- (f) A recording device fails despite reasonable maintenance and the timely repair or replacement is not feasible.
- (g) The questions are part of a routine processing or booking, and are not an interrogation.
- (h) The suspect is in custody for murder and the interrogation is unrelated to a murder. However, if any information concerning a murder is mentioned during the interrogation, the remainder of the interrogation shall be recorded.

The OPS shall maintain an original or an exact copy of the recording until a conviction relating to the interrogation is final and all appeals are exhausted or prosecution is barred by law (Pen. Code § 859.5).

600.4.3 OTHER MANDATORY RECORDINGS

Interviews conducted by officers for incidents involving any sexual assault allegation, physical abuse, all felony investigations, circumstances surrounding deaths, and any recantation by a patient shall be recorded, except in cases where the recording of the interview would make a patient anxious, uncomfortable, or result in their refusal to participate in the interview. In these circumstances, the refusal to be recorded or interviewed shall be recorded/ In cases where officers are unable to record based on the exceptions listed, officers shall document, in the report, the reasoning for not making the recording.

600.4.4 ADMINISTRATIVE INTERVIEW NOTIFICATIONS

- (a) It is the policy of DSH that Investigators who are investigating any allegation of staff misconduct strive to conduct a thorough and objective investigation. Both administrative investigation Subjects and Witnesses shall receive a "Notice of Investigatory Interview" 72 hours or 3 days prior to the interview. Investigators may serve these notices in person or by departmental email.
- (b) Prior to conducting an administrative interview, he/she must be read the Office of Special Investigation's Subject Administrative Admonishment form and witnesses must be read the Witness Admonishment form. The investigative admonishment shall also be read into the recorder while the audio recorder is on. All admonishment forms shall be signed by the parties being interviewed indicating their understanding and included in the investigation report.

600.5 DISCONTINUATION OF INVESTIGATIONS

The investigation of a criminal case or efforts to seek prosecution shall only be discontinued if one of the following applies:

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- (a) With the approval of a supervisor.
- (b) All reasonable investigative efforts have been exhausted, no reasonable belief that the person who committed the crime can be identified, and the incident has been documented appropriately.
- (c) The perpetrator of a misdemeanor has been identified and a warning is the most appropriate disposition.
 - 1. In these cases, the investigator shall document that the person was warned and why prosecution was not sought.
 - 2. Warnings shall not be given for felony offenses or other offenses identified in this policy or by law that requires an arrest or submission of a case to a prosecutor.
- (d) The case has been submitted to the appropriate prosecutor but no charges have been filed. Further investigation is not reasonable nor has the prosecutor requested further investigation.
- (e) The case has been submitted to the appropriate prosecutor, charges have been filed, and further investigation is not reasonable, warranted or requested, and there is no need to take the suspect into custody.
- (f) Suspects have been arrested, there are no other suspects, and further investigation is either not warranted or requested.
- (g) Investigation has proven that a crime was not committed (see the Sexual Assault Investigations Policy for special considerations in these cases).

The Domestic Violence, Child Abuse Sexual Assault Investigations and Adult Abuse policies may also require an arrest or submittal of a case to a prosecutor.

600.6 COMPUTERS AND DIGITAL EVIDENCE

The collection, preservation, transportation and storage of computers, cell phones and other digital devices may require specialized handling to preserve the value of the related evidence. If it is anticipated that computers or similar equipment will be seized, officers shall request that computer forensic examiners assist with seizing computers and related evidence. If a forensic examiner is unavailable, officers shall take reasonable steps to prepare for such seizure and use the resources that are available.

600.7 INVESTIGATIVE USE OF SOCIAL MEDIA AND INTERNET SOURCES

Use of social media and any other Internet source to access information for the purpose of criminal investigation shall comply with applicable laws and policies regarding privacy, civil rights and civil liberties. Information gathered via the Internet shall only be accessed by members while on-duty and for purposes related to the mission of DSH. If an employee encounters information relevant to a criminal investigation while off-duty or while using his/her own equipment, the employee shall note the dates, times and locations of the information and report the discovery to his/her supervisor as soon as possible. The employee, or others who have been assigned to do so, shall attempt to replicate the finding when on-duty and using DSH equipment.

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Information obtained via the Internet shall not be archived or stored in any manner other than DSH-established record keeping systems (see the Records Maintenance and Release and the Criminal Organizations policies).

600.7.1 ACCESS RESTRICTIONS

Information that can be accessed from any DSH computer, without the need of an account, password, email address, alias or other identifier (unrestricted websites), may be accessed and used for legitimate investigative purposes without supervisory approval.

Accessing information from any Internet source that requires the use or creation of an account, password, email address, alias or other identifier, or the use of nongovernment IP addresses, requires supervisor approval prior to access. The supervisor will review the justification for accessing the information and consult with legal counsel as necessary to identify any policy or legal restrictions. Any such access and the supervisor approval shall be documented in the related investigative report.

Accessing information that requires the use of a third party's account or online identifier requires supervisor approval and the consent of the third party. The consent must be voluntary and shall be documented in the related investigative report.

Information gathered from any Internet source shall be evaluated for its validity, authenticity, accuracy and reliability. Corroborative evidence shall be sought and documented in the related investigative report.

Any information collected in furtherance of an investigation through an Internet source shall be documented in the related report. Documentation shall include the source of information and the dates and times that the information was gathered.

600.7.2 INTERCEPTING ELECTRONIC COMMUNICATION

Intercepting social media communications in real time may be subject to federal and state wiretap laws. Officers shall seek legal counsel before any such interception.

600.8 CELLULAR COMMUNICATIONS INTERCEPTION TECHNOLOGY

The applicable Investigation unit supervisor or designee is responsible for ensuring the following for cellular communications interception technology operations (Gov. Code § 53166):

- (a) Security procedures are developed to protect information gathered through the use of the technology.
- (b) A usage and privacy policy is developed that includes:
 1. The purposes for which using cellular communications interception technology and collecting information is authorized.
 2. Identification by job title or other designation of employees who are authorized to use or access information collected through the use of cellular communications interception technology.
 3. Training requirements necessary for those authorized employees.

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4. A description of how DSH will monitor the use of its cellular communications interception technology to ensure the accuracy of the information collected and compliance with all applicable laws.
5. Process and time period system audits.
6. Identification of the existence of any memorandum of understanding or other agreement with any other local agency or other party for the shared use of cellular communications interception technology or the sharing of information collected through its use, including the identity of signatory parties.
7. The purpose of, process for and restrictions on the sharing of information gathered through the use of cellular communications interception technology with other local agencies and persons.
8. The length of time information gathered through the use of cellular communications interception technology will be retained, and the process the local agency will utilize to determine if and when to destroy retained information.

Employees shall only use approved devices and usage shall be in compliance with DSH security procedures, DSH's usage and privacy procedures and all applicable laws.

600.9 MODIFICATION OF CHARGES FILED

Employees are not authorized to recommend to the prosecutor or to any other official of the court that charges on a pending case be amended or dismissed without the authorization of a Watch Commander or the Chief of Law Enforcement. Any authorized request to modify the charges or to recommend dismissal of charges shall be made to the prosecutor.