

Public Complaints and Internal Affairs Investigations

413.1 POLICY

The Probation Agency has established policies and procedures for receiving, investigating, recording, and disposing of signed public complaints. The Attorney General issued an opinion that agencies may investigate unsigned complaints. It is Agency policy that all allegations of misconduct will be reviewed with a manager to determine whether an investigation should occur.

Anyone requesting information only or clarification of a policy or procedure shall be given a thorough explanation of that policy or procedure and legal issues involved in the situation leading to the inquiry. However, if they wish to initiate a complaint, the complaint procedures should be initiated.

Signed Complaints: The following procedures apply when a signed complaint is received and focus on the requirements of Section 832.5 of the Penal Code with particular regard to recordkeeping and notice to complainants. These procedures apply to all employees of the Agency whenever a signed complaint form is received by the Agency.

A. **POLICY** : This policy is to implement both the requirements of Section 832.5 of the Penal Code and Section 148.6 of the Penal Code. Section 832.5 of the Penal Code states that every California agency employing peace officers is to establish procedures for investigating complaints by the public and to make a written procedure available to the public. Section 148.6 of the Penal Code makes it a misdemeanor to knowingly make a false citizen complaint regarding a peace officer. The inmate grievance procedure in the institutions is not part of the public complaint policy, but inmates may make a public complaint by signing the complaint form.

The Agency will investigate complaints about alleged inadequate service or misconduct by Agency staff. These complaints shall be received courteously and resolved promptly. Employees shall assist and cooperate in the impartial and timely processing of complaints.

It is essential that the individual rights of the public, clients, complainants, and employees be preserved through the application of ethical considerations, as well as legal requirements. All investigations, communications, and feedback to complainants will be carried out in a manner which will provide for the protection of the rights of the complainant and the employee.

B. **PROCEDURE** :

1. **Types of Complaints** : Complaints may be made based on Probation Agency policies, practices, or procedures, or on alleged inadequate service or misconduct by an employee. Each complaint shall be investigated in a manner and disposed of in a time frame appropriate to the nature of the complaint. The Public Complaint Form located in the Word templates is used for complaints.

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The employee shall be notified that there is a public complaint once all the following conditions are present:

- a. The filing of a signed citizen complaint.
- b. The alleged misconduct, if true, could result in disciplinary action exceeding a verbal reprimand.
- c. The employee is interrogated; i.e., asked questions for the purpose of determining whether the charge/complaint is true.

Notification consists of informing the employee only of the general nature of the complaint. Some minor complaints may be received and resolved without employee interrogation and, therefore, without employee notification until the investigation is complete.

After the investigation is completed, the employee will be provided with an opportunity to review and sign the complaint form. Sustained complaints should result in appropriate training, performance review, disciplinary action, and/or criminal prosecution. If disciplinary action is taken, a copy of all documents on which the discipline was based will be provided, according to Agency procedures, to the employee.

2. Receipt, Recording, and Investigation of Complaints:

a. Complaints

Employees receiving complaints in person shall refer the complainant to the appropriate supervisor. The complainant will, at that time, be given the Public Complaint Form to complete and sign.

- 1.) Employees receiving complaints by phone or by letter shall refer the caller or the letter to the appropriate supervisor who shall cause a Public Complaint Form, a return envelope, and the Agency Complaint Letter to be sent to the complainant for completion.

A copy of the signed and completed Public Complaint Form will be sent by the supervisor to the manager as soon as possible, and a copy made for the Staff Services Manager.

- 2.) Although the supervisor may complete the Public Complaint Form for the complainant when necessary, every effort will be made to have the complainant complete the form in his/her own words/language, and sign the form. The complainant must sign the complaint form to initiate the process.

- 3.) Upon receipt of the signed Public Complaint Form from the complainant, the supervisor will review the form to ensure all necessary information is included in the complaint. The supervisor shall provide the complainant a copy of his/her own statements at the time the complaint is filed pursuant to 832.7(b) PC.

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4.) If the complainant does not sign the Public Complaint Form, the complaint process is terminated. However, if the complainant offers information about potential performance or conduct problems, the supervisor will discuss the information with the manager to determine whether an internal investigation should be conducted.

5.) The manager will notify the Chief Probation Officer, or his representative, by memo, on the 46th day, if any complaint has not been resolved within 45 days of completion of the Public Complaint Form. This memo shall include all investigation information and the anticipated completion date for the investigation.

6.) Allegations of misconduct or inadequate service may be investigated at the unit level or by PSU (Professional Standards Unit) internal affairs. Investigations are referred to PSU after consultation with the Division Manager and Chief Deputy.

7.) The investigative process, findings, routing, and retention of documents is essentially the same in the public complaint and internal investigation process. The officer has the right to see any negative material placed in his/her personnel file. The complaint file and the internal investigation file are part of the personnel records as defined in 832.8 PC. The documents will be retained for five years.

b. Upon completion of the public complaint investigation, disposition will be noted as:

- 1.) Unfounded – false or not factual.
- 2.) Exonerated – lawful and proper action on part of employee.
- 3.) Not sustained – insufficient evidence to prove or disprove.
- 4.) Sustained – evidence to prove allegation.

When possible, recommendation for changes that could eliminate a recurrence of the problem should be added to the Public Complaint Form.

If the investigation indicates that the complaint is false, and it appears that the complainant made the complaint knowing it to be false, the complaint and all investigative material will be referred to the District Attorney. It will be the position of the Agency that a complainant knowingly making a false complaint should be prosecuted on misdemeanor charges whenever possible. The Chief Probation Officer may release the material at his discretion. The officer may also sign a waiver to release the information.

The staff member who is the victim of the potential misdemeanor shall be advised of the referral to the District Attorney. Additionally, the employee should be advised of his/her right to sue for civil damages. The officer has the right to any material in his/her file.

3. Routing of Complaint Materials :

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a. The complaint file is part of the peace officer's "personnel records" as defined in 832.8 PC. As such, the employee must sign the documents before they may be filed in the complaint file.

b. Upon disposition, the completed Public Complaint Investigation Form and all investigative materials shall be sent to the manager and then to the Chief Deputy for review, approval, and signature. The forms and all investigative materials shall then be routed to the Staff Services Manager for placement in the Agency Complaint File.

4. Notification to Complainant :

a. No notice of disposition will be sent to a complaining party without a signed complaint form.

b. Upon disposition of the complaint, the supervisor or manager shall cause a Public Complaint Resolution Letter to be sent to the complainant. The letter shall be appropriately notated based on the results of the investigation.

5. Retention of Complaint :

The complaint forms and all investigative materials will be retained in the Agency Complaint File for a period of five years. Copies of the complaint forms and investigative results are not placed in the employee's personnel file. A sustained investigation may result in the information and appropriate documentation being used to complete an Informal Counseling memo, performance review, or formal disciplinary action.

Penal Code Section 832.7 provides that the investigations of complaints against peace officers are confidential and cannot be released to civil or criminal courts unless a motion has been filed pursuant to Evidence Code 1043 (Pitchess Motion) and the Court has ordered the release of the records.

413.2 EFFECTIVE DATE:

This policy was originally issued in the VCPA Policy Manual on 1-07-08, under 324-01. This policy was added to Lexipol on January 31, 2020, and replaces policy number 324-01.