

1 **JOHN M. O'BRIEN** [SBN 148757]
2 **O'BRIEN & BROWN LLP**
2339 Gold Meadow Way, Suite 230
Gold River, California 95670
3 Telephone: (916) 859-4910
Facsimile: (916) 859-4911

Vang Her v. Brian Freeman



PN-CA-009-002

4 **DANIEL MONTGOMERY**
5 **COUNTY COUNSEL**
6 **OFFICE OF YUBA COUNTY COUNSEL**
215 Fifth Street
Courthouse - Third Floor
7 Marysville, CA 95901-5788
Telephone: (916) 741-6401

8 Attorneys for Defendants Freeman, Saechao,
9 and County of Yuba

10
11
12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA
14

15 VANG HER, et al.,

16 Plaintiffs,

17 v.

18 BRIAN FREEMAN, et al.,

19 Defendants.
20

Case No. CIV S 97 1413 WBS GGH

STIPULATED CONSENT DECREE

21 The parties in the above-captioned matter have entered into a Settlement
22 Agreement which is dispositive of all of plaintiffs' claims. Pursuant to the terms of the
23 settlement, the parties have agreed that the Court may issue a consent decree which
24 memorializes the settlement obligations of the County of Yuba and the dismissal of
25 plaintiffs' action against all defendants with prejudice.

26 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND
27 DECREED:

28 ///

1 1. Defendant County of Yuba (hereinafter the "County") shall do all of the
2 following:

3 (a) The County shall immediately adopt and enforce all General Orders
4 drafted and modified by counsel for the parties. The General Orders to be amended or
5 created, adopted and enforced are: General Order 324 entitled "Temporary Custody of
6 Juveniles" (attached hereto as Exhibit 1); General Order 334 entitled "Hate Crimes"
7 (attached hereto as Exhibit 2); General Order 602 entitled "Search and Seizure" (attached
8 hereto as Exhibit 3); and, General Order 1020 entitled "Personnel Complaint Procedure"
9 (attached hereto as Exhibit 4).

10 (b) For a period of three (3) years, the County shall notify the legal
11 director of the ACLU Foundation of Northern California (hereinafter "ACLU"), as
12 counsel for plaintiffs, in writing, of any changes to the policies, procedures and forms
13 regarding matters covered by the Settlement Agreement executed by the parties to this
14 matter. The County will make reasonable efforts to give written notification of any such
15 changes at least fifteen (15) days prior to the dissemination of the notice of such changes
16 to Yuba County Sheriff's Department employees. If the County is unable to provide
17 fifteen (15) day advance notification, the County shall provide written notice to the
18 ACLU as early as practicable, but in no event later than thirty (30) days after notice of
19 the changes has been given to any Yuba County Sheriff's Department employee. After
20 the three (3) year period, written materials on the matters covered by the executed
21 Settlement Agreement, including new or amended General Orders or official forms, shall
22 promptly be made available to the ACLU upon written request.

23 (c) The Yuba County Sheriff will meet, if requested, with
24 representatives of the Yuba County chapter of the Hmong Community Board Association
25 of America on not less than a quarterly basis for a period of not less than one (1) year
26 commencing with the date of the executed Settlement Agreement. The purpose of these
27 meetings shall be to discuss law enforcement matters of concern to the Hmong
28 community (including but not limited to ensuring that adequate translation services are

1 available) and to, if possible, develop, agree upon and pursue possible solutions to those
2 concerned. If after four (4) meetings or one (1) year the Hmong Community Board
3 Association of America wishes to request the assistance of the Community Relations
4 Service of the United States Department of Justice in facilitating these discussions, the
5 County agrees to the Community Relations Services' participation.

6 (d) The County shall complete the translation of certain Yuba County
7 Sheriff's Department written materials into the Hmong, Spanish and Punjabi languages
8 no later than six (6) months after the date of execution of the Settlement Agreement.
9 Those materials include:

10 (1) The form entitled "Consent to Search" (attached hereto
11 as Exhibit 5), the use of which is described in General Order
12 602 entitled "Search and Seizure"; and

13 (2) The flyer entitled "Policy for Complaints By Members
14 of the Public" (attached hereto as Exhibit 6), which is
15 described and required to be made available to the public
16 pursuant to California Penal Code §832.5(a).

17 Upon the completion of these translations, the County shall use and distribute these
18 revised forms in appropriate circumstances.

19 2. The above-captioned action is hereby dismissed with prejudice against all
20 defendants.

21 3. Each side to bear his, her or its own attorneys' fees and costs.
22

23 DATED: _____
24

25
26 WILLIAM B. SHUBB
27 Judge of the United States District Court
28

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into by and between plaintiffs Vang Her, individually and as guardian ad litem for Bee Her, a minor, Joua Her, a minor, Song Her, a minor, Seng Her, a minor, Fue Her, a minor, Sheur Her, a minor, and Gaohly Her, a minor, Sai Xiong and Mao Yang (hereinafter collectively referred to as the "Hers"), on the one hand, and defendants Brian Freeman ("Deputy Freeman"), Theng Saechao ("Deputy Saechao") and the County of Yuba (the "County") (hereinafter collectively referred to as the "Defendants"), on the other hand. The above-named individuals and entity are the Parties ("Parties") to this Agreement.

This Agreement is made with reference to:

A. Those certain incidents which occurred on August 21, 1996 and September 4, 1996, in the County of Yuba, which led, on or about September 1, 1997 to the filing, by the Hers, of a complaint for damages in the United States District Court for the Eastern District of California, entitled *Vang Her v. Brian Freeman, et al.*, case number CIV-S-97-1413 WBS GGH (hereinafter referred to as the "Lawsuit").

B. In their Lawsuit, the Hers contend, among other things, that Defendants violated their Fourth Amendment Rights to be free from unreasonable searches, that the Her children were illegally transported and detained at the Sheriff's Department, and that Deputy Saechao conducted an unlawful interrogation of Mao Yang and Sai Xiong and her minor children at the Sheriff's Department.

C. Defendants contend that the two searches of the Hers' residence and questioning of the Hers at the Sheriff's Department were conducted with the Hers' consent, and Defendants otherwise deny that they did anything unlawful or improper during their investigation of Phyllis Boom's complaint.

D. The Parties enter into this Agreement to settle the Hers' Lawsuit and to avoid lengthy, costly and time-consuming litigation. By entering into this settlement, no Party admits any liability to another, and no Party concedes the validity of another Party's claims, allegations or arguments.

NOW, THEREFORE, for valuable consideration including the promises and obligations contained in this Agreement, the Parties agree as follows:

1. **Recitals.** The Parties hereby incorporate the recitals in paragraphs A through D above as if such recitals were set forth fully herein.

2. **General Release.** In exchange for the obligations imposed on the County by the terms of this Agreement, the Hers, on behalf of themselves and their heirs, executors, administrators, and assigns (all hereinafter referred to as "Releasers"), do hereby unconditionally release, acquit and forever discharge Defendants, and all and each of their respective successors,

assigns, officers, agents, employees, insurers, contractors, experts, consultants, attorneys, representatives and administrators, and any other individuals who are in privity with Defendants (all hereinafter referred to as "Releasees"), of and from any and all past, present or future claims, demands, damages, injuries, actions, causes of action of every nature, whether known or unknown, whether in law or equity, which Releasees now have or in the future may have against Releasees, arising by reason of, arising out of, or in any way relating to any of the matters, transactions and occurrences referenced in this Agreement, including, but not limited to, any and all claims and causes of action that are asserted or could have been asserted in the Lawsuit (hereinafter referred to as "Released Claims").

3. **Waiver of Future Claims:** The Hers acknowledge that this is a general release and waive any and all rights granted under section 1542 of the California Civil Code or under any comparable federal or state statute or rule or law. Section 1542 provides:

A general release does not extend to claims which the creditor does not know or expect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

4. **Attorneys' Fees and Costs.** Each Party agrees to bear his or her or its own attorneys' fees and costs related to the prosecution and/or defense of the Lawsuit or any of the Released Claims.

5. **The County's Obligations.** Defendants agree to the following terms upon execution of this Agreement as consideration for settlement of the Released Claims:

(a) **Adoption and Enforcement of Policies.** Simultaneous with the signing of this Agreement, the County agrees to adopt and enforce all General Orders drafted and modified by counsel for the Parties and which are attached hereto as Exhibits 1 through 4, and by this reference are expressly made part of this Agreement. The General Orders to be amended or created, adopted and enforced are: General Order 324 entitled "Temporary Custody of Juveniles" (Exhibit 1); General Order 334 entitled "Hate Crimes" (Exhibit 2); General Order 602 entitled "Search and Seizure" (Exhibit 3); and, General Order 1020 entitled "Personnel Complaint Procedure" (Exhibit 4).

(b) **Notification of Changes of Policies.** For a period of three (3) years, the County agrees to notify the legal director of the ACLU Foundation of Northern California (hereinafter "ACLU"), as counsel for the Hers, in writing, of any changes to the policies, procedures and forms regarding matters covered by this Agreement. Defendants will make reasonable efforts to give written notification of any such changes at least fifteen (15) days prior to the dissemination of the notice of such changes to Yuba County Sheriff's Department employees. If Defendants are unable to provide fifteen (15) day advance notification, defendant shall provide written notice to the ACLU as early as practicable, but in no event later than thirty (30) days after notice of the changes has been given to any Yuba County Sheriff's Department employee. After the three (3) year period, written materials on the matters covered by this

Agreement, including new or amended General Orders or official forms, shall promptly be made available to the ACLU upon written request.

(c) Meetings with Hmong Community. The County agrees that its Sheriff will meet, if requested, with representatives of the Yuba County chapter of the Hmong Community Board Association of America on not less than a quarterly basis for a period of not less than one (1) year commencing with the date of this Agreement. The purpose of these meetings shall be to discuss law enforcement matters of concern to the Hmong community (including but not limited to ensuring that adequate translation services are available) and to, if possible, develop, agree upon and pursue possible solutions to those concerns. If after four (4) meetings or one (1) year the Hmong Community Board Association of America wishes to request the assistance of the Community Relations Service of the United States Department of Justice in facilitating these discussions, the County agrees to the Community Relations Services' participation.

(d) Translation of Forms and Informational Materials. The County agrees to complete the translation of certain Yuba County Sheriff's Department written materials into the Hmong, Spanish and Punjabi languages no later than six (6) months after the date of this Agreement. Those materials include:

- (1) The form entitled "Consent to Search" attached as Exhibit 5 to this Agreement, the use of which is described in General Order 602 entitled "Search and Seizure" (Exhibit 3); and
- (2) The flyer entitled "Policy for Complaints By Members of the Public" attached as Exhibit 6 to this Agreement and which is described and required to be made available to the public pursuant to California Penal Code §832.5(a).

Upon the completion of these translations, the County agrees to use and distribute these revised forms in appropriate circumstances.

6. No Admission of Liability: This Agreement pertains to disputed claims, is made for the convenience of the Parties to avoid the expense and disruption of litigation, and does not constitute in any way an admission of liability for or against the validity of any of the Released Claims.

7. No Assignment of Released Claims: The Hers' represent and warrant that they have not sold, transferred, assigned, conveyed or otherwise disposed of any claim covered by this Agreement and that they are the true owners of the Released Claims and have the power and right to assert the claims.

8. Covenant Not to Sue. The Hers covenant and agree that they will forever refrain from instituting, prosecuting, maintaining, proceeding on, or advising to be commenced a suit which arises out of, or is or may be, in whole or in part, based upon, related to or connected with

the Released Claims or any of them. The Hers understand that this Agreement is a complete defense to any suit or other proceeding asserting any of the Released Claims which may be instituted by or on their behalf.

9. **No Other Promises.** The Parties represent and warrant that no other promises or inducements have been offered or given in consideration of this Agreement and that this Agreement is executed without reliance upon any statement or representation by any other Party concerning the nature and extent of damages and/or legal liability which are disputed and denied.

10. **Costs of Enforcement.** If any party commences any legal proceedings against any other Party with respect to any of the terms and conditions of this Agreement, the non-prevailing Party will pay the prevailing Party all expenses of those proceedings, including reasonable attorney's fees.

11. **Binding Effect.** This Agreement binds and inures to the benefit of the successors and assigns of the Parties.

12. **Construction.** This Agreement will not be construed against the Party preparing it but will be construed as if prepared by all Parties.

13. **Counterparts.** This Agreement may be executed in several counterparts with the same effect as if all Parties signed one Agreement. All such counterparts constitute one Agreement.

14. **California Law.** This Agreement will be construed and interpreted according to the laws of the State of California.

15. **Partial Invalidity.** Should any of the provisions set forth herein be determined to be invalid by a court, agency or other tribunal of competent jurisdiction, such determination shall not affect the enforceability of any other provision herein.

16. **Entire Agreement.** This Agreement constitutes the entire Agreement between the Parties and supersedes and replaces all previous agreements and understandings between them relating to this matter. The Parties agree that no promises or inducements have been made which caused any party to sign this Agreement other than those which are expressly set forth herein.

17. **Modification of Agreement.** No supplement, modification, waiver or amendment with respect to this Agreement shall be binding unless executed in writing by the Party against whom enforcement of such supplement, modification, waiver or amendment is sought.

18. **Assistance of Counsel.** The Parties acknowledge that they have been represented in negotiations for and in the preparation of this Agreement by counsel of their own choosing, that they have read this Agreement or that it has been read to them by counsel, that they have

had this Agreement explained fully by counsel and that they are fully aware of the contents and legal effect of this Agreement. Each of the undersigned Parties warrants, represents and agrees that he, she or it is signing this Agreement of his, her or its own free act and will, and that, in executing this Agreement, they do so with full knowledge of any and all rights which they may have, and that they have received independent legal advice from their attorneys and guardians ad litem with regard to their various rights which they may have against each other, and which arise out of the facts alleged in the Lawsuit.

19. **Cooperation.** All Parties and their counsel agree to cooperate in the preparation and execution of all documents called for by the terms of this Agreement, including all documents necessary to obtain judicial approval of the Settlement Agreement and to effect a dismissal with prejudice of each and all of their claims asserted in the Lawsuit.

20. **Consent Decree.** The Parties agree that a Consent Decree may be issued by the Court which, at a minimum, memorializes the County's obligations under this Agreement and the dismissal of plaintiffs' lawsuit against all defendants with prejudice.

21. **Authority.** By signing this Agreement, each party warrants and represents that he, she or it is authorized in all respects to enter into this Agreement and that all consents or actions required by law to enter into this Agreement have been obtained.

IN WITNESS WHEREOF, the Parties have read all of this Agreement consisting of six (6) pages and six (6) attached Exhibits and fully understand it and have caused the Agreement to be duly executed.

DATED: _____

By: _____

VANG HER, individually and as
Guardian ad Litem for Bao Her, Joua
Her, Song Her, Seng Her, Shcur Her
and Gaohly Her

DATED: _____

By: _____

SAI XIONG

DATED: _____

By: _____

MAO YANG

DATED: _____

By: _____

BRIAN FREEMAN

DATED: _____

By: _____
THENG SAECHAO

DATED: _____

COUNTY OF YUBA

By: _____
BILL SIMMONS
Its: Chairman of the Board of
Supervisors

DATED: _____

YUBA COUNTY SHERIFF

By: _____
VIRGINIA BLACK

APPROVED AS TO FORM AND CONTENT:

DATED: _____

DICKSTEIN & MERIN

By: _____
MARK MERIN
Attorneys for Plaintiffs

DATED: _____

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN
CALIFORNIA, INC.By: _____
JOHN CREW
Attorneys for Plaintiffs

DATED: _____

O'BRIEN & BROWN LLP

By: _____
JOHN M. O'BRIEN
Attorneys for Defendants

Exhibit “1”

Temporary Custody of Juveniles

324.1 PURPOSE & SCOPE

This Departmental Policy is for the detention and disposition of juveniles taken into temporary custody by members of the Yuba County Sheriff's Department.

324.2 WELFARE & INSTITUTIONS CODE § 625

Legal authority for taking custody of juvenile offenders is found in Welfare and Institutions Code § 625.

324.21 CONSTITUTIONAL RIGHTS ADVISEMENT

In any case where a juvenile is taken into temporary custody, the juvenile should be promptly advised of his/her rights to ensure the admissibility of any spontaneous statements, whether or not questioning is intended.

324.3 TEMPORARY CUSTODY (300, 601, OR 602 WIC)

No juvenile may be held in temporary custody at the Yuba County Sheriff's facility without authorization of the arresting deputy's supervisor or the Watch Commander. An individual taken into custody for Welfare & Institutions Code § 300 or § 601 shall be processed as soon as practical. Juveniles detained under Welfare & Institutions Code § 602 may not be held at this facility for more than 6 hours from the time of arrival at the Sheriff's Department. When a juvenile is taken into custody, the following steps shall be taken by the arresting deputy or the investigator assigned to the case:

- (a) Place the detained juvenile in secure or non-secure custody and complete the Juvenile Detention Log (YCSO Form 606).
- (b) Notify the juvenile's parent, guardian or a responsible relative that such juvenile is in custody and provide the location where the juvenile is being held and the intended disposition (Welfare & Institutions Code § 627).
- (c) Submit a completed report to the Watch Commander for approval.

Status offenders and abused or neglected children (juveniles falling within provisions of Welfare & Institutions Code §§ 300 and 601) may not be detained in jails or lockups. They may be taken to welfare workers but may not be held in a secured environment or come into contact with adults in custody in the station.

324.31 TEMPORARY CUSTODY REQUIREMENTS

All juveniles held in temporary custody shall have the following made available to them:

- Access to toilets and washing facilities.

YUBA COUNTY SHERIFF'S DEPARTMENT

Temporary Custody of Juveniles

- One snack upon request during term of temporary custody if the juvenile has not eaten within the past four hours or is otherwise in need of nourishment. The snack shall be provided by the Deputy.
- Access to drinking water,
- Privacy during visits with a lawyer.
- Provide the juvenile an opportunity to make at least two telephone calls within one hour of being taken into temporary custody. The telephone calls must be made to a parent, guardian, responsible relative, employer, or an attorney.

324.32 NON-CONTACT REQUIREMENTS (208 WIC)

Contact between juveniles in temporary custody, both secure and non-secure, and adult prisoners shall be restricted as follows:

- (a) There will be no communication between the juvenile and adult prisoners allowed.
- (b) If an adult prisoner, including an inmate worker, is present with the juvenile in the same room or area, a Yuba County Sheriff's Department employee trained in the supervision of inmates shall maintain a constant side-by-side presence with either the juvenile or adult prisoner to assure there is no communication between the juvenile and adult prisoner.
- (c) Situations in which a juvenile and adult prisoner may be in the same room or corridor shall be limited to:
 - 1. Booking
 - 2. Medical screening
 - 3. Inmate worker presence while performing work necessary for the operation of the Yuba County Sheriff's Department such as meal service and janitorial service.
 - 4. Movement of persons in custody within the Yuba County Sheriff's Department.

324.4 TYPES OF CUSTODY

The following provisions apply to types of custody, and detentions of juveniles brought to the Yuba County Sheriff's Department.

324.41 NON-SECURE CUSTODY

All non-violent juveniles not meeting the criteria to be placed in a locked detention room, or any non-violent juvenile under the age of 14 taken into custody for a criminal violation, regardless of the seriousness of the offense, may be temporarily detained in the Sheriff's facility; however the custody must be non-secure. Non-secure custody means juveniles shall be placed in an unlocked room or open area. Juveniles may be handcuffed, but not to a stationary or secure object. Juveniles shall receive constant personal visual supervision by law enforcement personnel. Monitoring a juvenile using audio, video or other electronic devices does not replace constant personal visual supervision.

324.42 SECURE CUSTODY – WIC § 602

Secure custody means a juvenile may be locked in a room or secured in a detention room subject to the following conditions:

YUBA COUNTY SHERIFF'S DEPARTMENT

Temporary Custody of Juveniles

- (a) Juvenile is 14 years of age or older.
- (b) Juvenile is taken into custody on basis of having committed a criminal law violation as defined in 602 WIC.
- (c) Detention at this facility does not exceed 6 hours from the time of arrival at the Sheriff's Station, when both secure and non-secure time is combined.
- (d) Detention is for the purpose of giving the deputy time to investigate the case, facilitate the release of the juvenile to parents, or arrange transfer to Juvenile Hall.
- (e) The deputy apprehending the juvenile has reasonable belief that the juvenile presents a "serious security risk of harm to self or others." Factors to consider include:
 - Age, maturity, and delinquent history of juvenile;
 - Severity of offense for which taken into custody;
 - Juveniles behavior;
 - Availability of staff to provide adequate supervision or protection of the juvenile;
 - Age, type, and number of other individuals detained at the facility.

324.43 SECURE DETENTION OF JUVENILES OUTSIDE OF DETENTION ROOM

Only juveniles meeting the criteria to be held in a locked detention room may be secured to a stationary object. The juvenile shall not be secured to a stationary object, i.e. chair, bench, etc., for more than 30 minutes unless a detention room is not available. If a juvenile is secured, the following conditions must be met:

- (a) A Department employee must be present at all times to assure the juvenile's safety while secured to a stationary object.
- (b) Juveniles who are secured to a stationary object are moved to a detention room as soon as one becomes available.
- (c) Juveniles secured to a stationary object for longer than 30 minutes, and every 30 minutes thereafter, shall be approved by the Watch Commander and the reason for continued secure detention shall be documented.

324.44 JUVENILE DETENTION ROOMS

The Yuba County Sheriff's Department has provided detention rooms outside of the adult jail facility. These rooms are designed for the temporary detention of juveniles meeting the criteria of secure custody. Deputies or Investigators placing juveniles in secure detention rooms shall comply with the following:

- (a) It is the Deputy's responsibility to notify the Watch Commander, desk personnel, and/or Investigation personnel that a detention has begun. The juvenile must be told the reason for incarceration, the length of time secure detention will last and that it may not exceed a total of 6 hours.
- (b) Any juvenile placed in a locked detention room shall be separated according to sex and the severity of the crime (felony or misdemeanor) unless emergency circumstances will not allow for this type of segregation. When such separation is

YUBA COUNTY SHERIFF'S DEPARTMENT

Temporary Custody of Juveniles

not possible, the Watch Commander shall be consulted for directions on how to proceed with the detention of the multiple juveniles involved.

- (c) A written record will be maintained on a detention log, YCSO Form 606, located in the Watch Commander's office. This log will include the charges for which the juvenile is being detained, the circumstances that warrant a secured detention, the time the detention began, and the time it ended. There will also be a place for the Watch Commander to initial the log approving the detention to occur and to initial the log when the juvenile is released.
- (d) It is the responsibility of a deputy (when available) to monitor the custody of the juvenile and to prepare the necessary paperwork to process the juvenile for release to a parent, guardian, or the appropriate juvenile custody facility. When a Deputy is not available, the Watch Commander, or his/her designee, shall be responsible for monitoring the detention of the juvenile, and ensure that appropriate paperwork is prepared to process the juvenile out of the custody of this Department. In all cases of a juvenile detention, the Watch Commander shall be notified of the detention, and, when applicable, the name of the investigator taking responsibility for the detention and processing of the juvenile.
- (e) A thorough inspection of the detention room shall be conducted before placing a juvenile into the room. A second inspection shall be conducted after removing the juvenile. Any damage noted to the room shall be photographed and documented in the crime report.

324.45 JUVENILE'S PERSONAL PROPERTY

The deputy placing a juvenile into a detention room must make a thorough search of the juvenile's property. This will ensure all items likely to cause injury to the juvenile or the facility are confiscated and placed in a property bag. The property shall be inventoried in the juvenile's presence and sealed into the bag. The property will be maintained by the responsible deputy or locked in secure location until the juvenile is released from the custody of the Yuba County Sheriff's Department.

324.46 MONITORING OF JUVENILES

The juvenile shall constantly be monitored by the audio/video system during the entire detention. An in-person visual inspection shall be done to ensure the welfare of the juvenile and shall be conducted at least once each half-hour, on an unscheduled basis, until the juvenile is released. This inspection shall not be replaced by video monitoring. This inspection shall be conducted by a designee of the Watch Commander, and the visual inspection shall be logged on the Inspection Log in the Watch Commander's office.

More frequent visual inspections should be made as circumstances dictate as in the case of an injured or ill juvenile being detained, or if specific circumstances exist such as a disciplinary problem, or suicide risk. In such instances the Watch Commander shall be fully informed about the special circumstances in order to evaluate continued detention of such a juvenile.

324.47 MANDATED JUVENILE PROVISIONS

While a juvenile is being detained in the detention room, he/she shall be provided with the following provisions:

- Reasonable access to toilets and washing facilities

YUBA COUNTY SHERIFF'S DEPARTMENT

Temporary Custody of Juveniles

- Food, if the juvenile has not eaten within the past four hours, or is otherwise in need of nourishment, including any special diet required for the health of the juvenile. All food given to a juvenile in custody shall be provided from the jail food supply.
- Reasonable access to drinking water
- Privacy during lawyer visits
- Blankets and clothing necessary to assure the comfort of the juvenile (clothing shall be provided by the Jail if the juvenile's clothing is taken as evidence or is otherwise unsuitable or inadequate for the continued wear while in custody)

324.48 FORMAL BOOKING (WIC § 602 ONLY)

No juvenile shall be formally booked without the authorization of the arresting deputy's supervisor, or, in his or her absence, the Watch Commander.

Any juvenile, fourteen (14) years of age or older, who is taken into custody for a felony, or any juvenile whose acts amount to a sex crime, shall be booked, fingerprinted, and photographed.

For all other acts defined as crimes, juveniles may be booked, fingerprinted, or photographed upon the approval from the Watch Commander or Detective Supervisor, giving due consideration to the following:

1. The gravity of the offense
2. The past record of the offender
3. The age of the offender

324.49 DISPOSITIONS

Any juvenile not transferred to another juvenile facility shall be released to one of the following:

1. Parent or legal guardian
2. An adult member of his/her immediate family
3. An adult person specified by the parent/guardian
4. An adult person willing to accept responsibility, when the juvenile's parents are unavailable as approved by the Watch Commander.

If the 6-hour time limit has expired, the juvenile should be transported to the juvenile hall to accept custody.

After a deputy has taken a juvenile into temporary custody for a violation of law, the following dispositions are authorized:

- The arresting deputy may counsel or admonish the juvenile and recommend no further action be taken.

YUBA COUNTY SHERIFF'S DEPARTMENT

Temporary Custody of Juveniles

- If the arresting deputy or the Watch Commander feels that further action is needed, the juvenile will be released to a responsible person as listed above, and such juvenile will be advised that follow-up action will be taken.
- The arresting deputy may complete an Application for Petition on behalf of the juvenile and forward it to the Probation Department for processing.
- The juvenile may be transferred to Juvenile Hall with authorization of the appropriate supervisor or the Watch Commander when the violation falls within the provisions of Welfare & Institutions Code § 602.

If a juvenile is to be transported to Juvenile Hall, the following forms shall accompany the juvenile:

- Application for Petition.
- The applicable report(s) for each juvenile transported shall be forwarded to the Probation Department within 24 hours.
- Any personal property taken from the juvenile at the time of detention.

324.5 JUVENILE CONTACTS AT SCHOOL FACILITIES

Absent exigent circumstances, deputies should make every reasonable effort to notify responsible school officials prior to contacting a student on campus while school is in session.

- (a) Reasonable efforts should be taken to coordinate with school officials to minimize disruption of school functions and maintain a low profile law enforcement presence when contacting a student.
- (b) Whenever circumstances warrant the temporary detention or interview of a juvenile student on an elementary school campus, the deputy should:
 - 1. Take all reasonable steps to notify a parent, guardian or responsible adult, including those phone numbers listed on any contact card on file with the school or provided by the student. All efforts to make contact with parents should be documented.
 - 2. If efforts to contact a parent, guardian or responsible adult are unsuccessful, an interview with the juvenile may proceed without them. Upon the request of the juvenile, a school official or lawyer may be present during the interview in lieu of a parent.
 - 3. If contacted, the selected parent or other responsible adult should be permitted to be present during any interview or provide oral consent for the interview to proceed in their absence. A student may select a responsible school official in the absence of a parent or guardian.
 - (a) An adult suspected of child abuse or other criminal activity involving the juvenile, or an adult, who in the opinion of the deputy appears to be under the influence or otherwise unable or incompetent to exercise

YUBA COUNTY SHERIFF'S DEPARTMENT

Temporary Custody of Juveniles

parental rights on behalf of the juvenile, will not be permitted to be present.

- (b) If the deputy reasonably believes that exigent circumstances exist which would materially interfere with the deputy's ability to immediately interview the juvenile, the interview may proceed without the parent or other responsible adult. In such circumstances, the exigent circumstances should be set forth in a related report.
- (c) Whenever circumstances warrant the temporary detention or interview of a juvenile student on a secondary school campus, the deputy should:
 - 1. Take all reasonable steps to notify a parent, guardian or responsible adult, including those phone numbers listed on any contact card on file with the school or provided by the student. All efforts to make contact with parents should be documented.
 - 2. If efforts to contact a parent, guardian or responsible adult are unsuccessful, an interview with the juvenile may proceed without them. Upon the request of the juvenile, a school official or lawyer may be present during the interview.

324.6 RELEASE OF INFORMATION CONCERNING JUVENILES

Court decisions and legislation have combined to carefully specify situations in which information may be given out or exchanged when a case involves a juvenile. Deputies of this Department shall not divulge any information regarding juveniles in situations where they are uncertain of the legal authority to do so.

324.61 RELEASE OF INFORMATION BY SUPERIOR COURT ORDER

A copy of the current policy of the Juvenile Court concerning authorized release of information and appropriate acknowledgment forms shall be kept with copies of this procedure in the Policy Manual. Such releases are authorized by Welfare & Institutions Code § 827.

324.62 RELEASE OF INFORMATION TO OTHER AGENCIES

Welfare & Institutions Code § 828 authorizes the release of certain information to other agencies. It shall be the responsibility of the Records & Communications Supervisor and the appropriate Investigation supervisors to ensure that personnel of those bureaus act within legal guidelines.

324.7 ADDITIONAL CONSIDERATIONS PERTAINING TO JUVENILES

324.71 EMERGENCY MEDICAL CARE OF JUVENILES IN CUSTODY

When emergency medical attention is required for a juvenile who is either in secure or non-secure custody, the paramedics will be called. The Watch Commander shall be notified of the need for medical attention for the juvenile.

In cases where injury or illness is life threatening and where lost minutes may be the deciding factor, the arresting deputy or the discovering deputy should administer first aid prior to the arrival of the paramedics. The juvenile will then be transported to a medical facility.

YUBA COUNTY SHERIFF'S DEPARTMENT

Temporary Custody of Juveniles

324.72 SUICIDE PREVENTION OF JUVENILES IN CUSTODY

The arresting deputy should be alert to potential symptoms based upon exhibited behavior that may indicate the juvenile is a suicide risk. These symptoms may include depression, refusal to communicate, verbally threatening to kill himself/herself, or any unusual behavior which may indicate the juvenile may harm himself/herself while in custody in either secure or non-secure detention.

The detaining or transporting deputy is responsible to notify the Watch Commander if he/she believes the juvenile may be a suicide risk. The Watch Commander will then make arrangements to contact Sutter-Yuba Mental Health Services for evaluation, or to contact Juvenile Hall and make arrangements for the transfer of the juvenile, providing the juvenile meets the intake criteria. The juvenile shall be under constant personal supervision until the transfer is completed.

324.73 USE OF RESTRAINT DEVICES

The use of a restraint is an extreme measure and only for a temporary measure pending transportation to another facility or until other custodial arrangements can be made. The use of restraints shall only be used when the juvenile:

1. displays bizarre behavior that results in the destruction of property or show intent to cause physical harm to self or others;
2. is a serious and immediate danger to himself/herself or others;
3. otherwise falls under the provisions of Welfare and Institutions Code § 5150.

Restraint devices include devices which immobilize a juvenile's extremities and/or prevent the juvenile from being ambulatory. Restraints shall only be used after less restrictive measures have failed and with the approval of the Watch Commander.

Restraints shall only be used so long as it reasonably appears necessary for the juvenile's protection or the protection of others.

Direct visual observation shall be conducted at least twice every thirty minutes to ensure that the restraints are properly employed, and to ensure the safety and well being of the juvenile.

The Watch Commander shall arrange to have the juvenile evaluated by Sutter-Yuba Mental Health Services as soon as possible if there is evidence of mental impairment. When mental impairment is suspected, constant personal visual supervision shall be maintained in order to ensure that restraints are properly employed and to ensure the safety and well being of the juvenile. Such supervision shall be documented in the police report.

While in restraint devices, all juveniles shall be housed alone to protect them from abuse. In no case shall restraints be used as a punishment, or as a substitute for treatment.

324.74 DISCIPLINE OF JUVENILES IN CUSTODY

No discipline shall be administered by Sheriff's Department personnel while a juvenile is in custody.

YUBA COUNTY SHERIFF'S DEPARTMENT

Temporary Custody of Juveniles

324.75 DEATH OF A JUVENILE WHILE DETAINED

In the event of a juvenile's death while being detained at the Yuba County Sheriff's Department, the District Attorney's Office and the Sheriff-Coroners Office will conduct the investigation of the circumstances surrounding the death. The Operations Division Commander or his/her designee will conduct an administrative review of the incident.

Pursuant to Government Code § 12525, the Sheriff or his/her designee shall provide the Attorney General with a report documenting the circumstances of the death within ten calendar days.

324.76 CURFEW VIOLATIONS

Juveniles detained for curfew violations will be charged with Yuba County Municipal Code § 8343.040. The juvenile(s) may be released in the field to their parent, legal guardian or responsible adult or brought to the station and released to a parent, legal guardian or responsible adult.

Exhibit "2"

Hate Crimes

334.1 PURPOSE & SCOPE

The Yuba County Sheriff's Department recognizes the rights of all individuals guaranteed under the Constitution and the laws of this State. When such rights are infringed upon by violence, threats or other harassment, this Department will utilize all available resources to see that justice is served under the law. This policy provides members of this Department with guidelines for identifying and investigating incidents and crimes which may be motivated by hatred or other bias.

334.2 DEFINITIONS

HATE CRIMES – consist of any act of intimidation, harassment, physical force or threat of physical force directed against any person, group, family, community organization or property motivated in whole or in part by hostility toward real or perceived race, ethnic background, national origin, religious belief, gender, age, disability, sexual orientation or political affiliation with the intent of causing fear, injury, intimidation or to deter the free exercise and enjoyment of any right secured by the Constitution or the law.

334.3 CRIMINAL STATUTES:

Penal Code § 422 – prohibits verbal, written or electronically transmitted threats to commit great bodily injury or death to another or his/her immediate family.

Penal Code § 422.6 (a) - prohibits the use of force or threats of force to willfully injure, intimidate, interfere with, oppress, or threaten any person in the free exercise or enjoyment of rights and privileges secured by the Constitution or law because of the person's real or perceived race, color, religion, ancestry, national origin, disability, gender or sexual orientation. (NOTE: Speech alone does not constitute a violation of this section except when the speech itself threatened violence and the defendant had the apparent ability to carry out the threat.)

Penal Code § 422.6 (b) - prohibits knowingly defacing, damaging or destroying the real or personal property of any person for any of the purposes set forth in 422.6 (a)

Penal Code § 422.7 - provides for other criminal offenses involving threats, violence or property damage in excess of \$500.00 to become felonies if committed for any of the purposes set forth in 422.6.

Penal Code § 422.9 – provides for the criminal enforcement of any order issued pursuant to Civil Code § 52.1.

YUBA COUNTY SHERIFF'S DEPARTMENT

Hate Crimes

Penal Code § 11411 – prohibits terrorizing by placing or displaying any unauthorized sign, mark, symbol, emblem or other physical impression (including Nazi swastika or burning cross) on another person's private property.

Penal Code § 11412 – prohibits threats terrorizing threats of injury or property damage to interfere with exercise of religious beliefs.

Penal Code § 594.3 – prohibits vandalism to religious buildings or places of worship.

Penal Code § 11413 – prohibits use of explosives or other destructive devices for terrorizing another at health facilities, places of religion, group facilities and other specified locations.

334.4 CIVIL STATUTES:

Civil Code § 51.7 – except for statements made during otherwise lawful labor picketing, all persons in this state have the right to be free from any violence or intimidation by threat of violence against their person or property because of actual or perceived race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, disability or position in a labor dispute.

Civil Code § 52 – provides for civil suit by individual, Attorney General, District Attorney or City Attorney for violation of 51.7, including damages, TRO and injunctive relief.

Civil Code § 52.1 – provides for TRO and injunctions for violations of individual and Constitutional rights enforceable as criminal conduct under Penal Code § 422.9.

334.5 PROCEDURE FOR INVESTIGATING HATE CRIMES

Whenever any member of this Department receives a report of a suspected hate crime or other activity which reasonably appears to involve a potential hate crime, the following should occur:

- (a) Officer(s) will be promptly assigned to contact the victim, witness or reporting party to investigate the matter further as circumstances may dictate.
- (b) A supervisor should be notified of the circumstances as soon as practical.
- (c) Once "in progress" aspects of any such situation have been stabilized (e.g. treatment of victims, apprehension of present suspects, etc.), the assigned officer(s) will take all reasonable steps to preserve available evidence which may tend to establish that a hate crime was involved.
- (d) The assigned officer(s) will interview available witnesses, victims and others to determine what circumstances, if any, indicate that the situation may involve a hate crime.
- (e) Depending on the situation, the assigned officer(s) or supervisor may request additional assistance from detectives or other resources to further the investigation.
- (f) The assigned officer(s) will include all available evidence indicating the likelihood of a hate crime in the relevant report(s). All related reports will be clearly marked as "Hate Crimes" and, absent prior approval of a supervisor, will be completed and submitted by the assigned officer(s) before the end of the shift.

YUBA COUNTY SHERIFF'S DEPARTMENT

Hate Crimes

- (g) The assigned officer(s) will provide the victim(s) of any suspected hate crime with a brochure on hate crimes. Penal Code § 13873 (Such brochures will also be available to members of the general public upon request). The assigned officer(s) should also make reasonable efforts to assist the victim(s) by providing available information on local assistance programs and organizations.
- (h) The assigned officer(s) and supervisor should take reasonable steps to insure that any such situation does not escalate further. (e.g. Possible TRO through the District Attorney or City Attorney. Penal Code § 136.2 or Civil Code § 52.1 as indicated).

334.51 INVESTIGATION RESPONSIBILITY

If a case is assigned to Detectives, the assigned Detective will be responsible for following up on the reported Hate Crime as follows:

- (a) Coordinate further investigation with the District Attorney and other appropriate law enforcement agencies, as appropriate.
- (b) Maintain contact with the victim(s) and other involved individuals as needed.
- (c) Maintain statistical data on suspected Hate Crimes and tracking as indicated.

334.6 TRAINING

All members of this Department will receive POST approved training on Hate Crime recognition and investigation as provided by Penal Code § 13519.6.

Exhibit "3"

Search & Seizure

322.1 PURPOSE & SCOPE

Case law regarding search and seizure is ever changing and frequently subject to interpretation under the varying facts of each situation. However, this policy is intended to provide a few of the basic guidelines which may assist an officer in evaluating search and seizure issues. Specific situations should be handled according to current training and an officer's familiarity with clearly established case law.

322.2 REASONABLE EXPECTATION OF PRIVACY

Both the United States and the California Constitutions provide every individual with the right to be free from unreasonable governmental intrusion. As a general rule, members of this Department should not physically enter any area where an individual has a reasonable expectation of privacy in order to conduct a search or seizure without:

- A valid search warrant; or
- Exigent circumstances; or
- Valid consent.

322.3 SPECIFIC SITUATIONS

322.31 RESIDENCE

Absent a valid search warrant, exigent circumstances or valid consent, every person has a reasonable expectation of privacy inside their home. Individuals do not, however, generally have a reasonable expectation of privacy in areas around their home where the general public (e.g. mailmen, salesmen, visitors) would reasonably be permitted to go.

322.32 PLAIN VIEW

Because an individual does not have an expectation of privacy as to items which are in plain view, no "search" has taken place in a constitutional sense when an object is viewed from a location where the officer has a right to be.

An item in plain view may generally be seized when:

- It was viewed from a lawful location;
- There is probable cause to believe that the item is linked to criminal activity; and
- The location of the item can be legally accessed.

It is important to note that the so-called "Nexus Rule" requires that even items in plain view must not be seized unless there is probable cause to believe that the item will aid in an investigation. Such a nexus should be included in any related reports.

Search & Seizure

322.33 EXIGENT CIRCUMSTANCES

Exigent circumstances permitting entry into premises without a warrant or valid consent generally include:

- Imminent danger of injury or death; or
- Serious damage to property; or
- Imminent escape of a suspect; or
- The destruction of evidence.

An exigency created by the officer's own conduct as an excuse for a warrantless entry is not generally permitted.

322.4 CONSENT

Entry into a location for the purpose of conducting a search for any item reasonably believed relevant to any investigation is permitted once valid consent has been obtained. However, consent is only valid if it is:

- Voluntary (i.e. clear, specific and unequivocal); and
- Obtained from a person with authority to give the consent.

Whenever unusual circumstances would not otherwise prevent the use of the Department's "CONSENT TO SEARCH" form, deputies should have the individual read the form, ensure they understand it, and provide them with a copy after they have signed it.

If unusual circumstances prevent the use of the "CONSENT TO SEARCH" form, deputies should describe such circumstances in related report(s).

While there is no requirement that an individual be told of their right to refuse consent, such a warning and the use of the "CONSENT TO SEARCH" form provide strong support for the validity of any consent.

Consent must be obtained as the product of a free will. It cannot be obtained through submission to authority, expressed or implied.

At any point that an individual withdraws consent, any related search should be discontinued unless and until otherwise legally permitted.

Exhibit “4”

Section

1020**YUBA COUNTY SHERIFF'S DEPARTMENT**

Personnel Complaint Procedure**1020.1 PURPOSE & SCOPE**

The purpose of this procedure is to provide guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members and employees of this department.

1020.12 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".

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

- **Informal** - a matter in which the complaining party knowingly and voluntarily expresses satisfaction that appropriate action has been taken by a department supervisor of rank greater than the accused employee and that a formal complaint need not be taken. 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. Members of the public have an absolute right to file a complaint and departmental personnel should not attempt to convince a member of the public not to file formal complaints.
- **Formal** - a matter in which the complaining party requests further investigation or which a ranking department supervisor determines that further action is warranted. Such complaints may be investigated by a department supervisor of rank greater than the accused employee or referred to the Professional Standards Unit depending on the seriousness and complexity of the investigation.

1020.21 AVAILABILITY OF COMPLAINT FORMS

Personnel complaint forms will be maintained in a clearly visible location in the public lobby of the Sheriff's Department. Forms may also be placed at other government facilities (e.g. County Offices).

- Any request for a complaint form shall be accommodated.

1020.22 SOURCE OF COMPLAINTS

- Department employee becoming aware of alleged misconduct (shall immediately notify a supervisor).

YUBA COUNTY SHERIFF'S DEPARTMENT

Personnel Complaint Procedure

- A supervisor receiving a complaint from any source alleging misconduct of an employee which, if true, could result in disciplinary action.
- Anonymous complaints and third party complaints should be accepted and investigated to the extent that sufficient information is provided.

1020.23 ACCEPTANCE OF COMPLAINTS

A complaint may be filed in person, by 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 normally result in disciplinary action.
- (b) When an uninvolved supervisor or the Watch Commander 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 their 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.

1020.24 COMPLAINT DOCUMENTATION

Formal complaints of alleged misconduct shall be documented by a supervisor on the department Personnel Complaint form. The supervisor shall insure that the nature of the complaint is defined as clearly as possible.

A supervisor may elect to document informal complaints on an inter-office memorandum or as an entry to a critical events file.

When a Personnel Complaint form is completed in person, the complainant should legibly write a detailed narrative of his/her complaint. If circumstances indicate that this is not feasible, the complaint may be dictated to the receiving supervisor. Whether handwritten or dictated, the complainant's signature should be obtained at the conclusion of the statement. The complaining party should also be provided with a copy of his/her own original complaint. Penal Code § 832.7.

1020.25 FALSE COMPLAINT ADMONITION

Every person making a complaint in person shall be instructed to carefully read and sign the admonitions on the Personnel Complaint form addressing consequences of filing a false complaint pursuant to Penal Code § 148.6 and Civil Code § 47.5.

If the person refuses to sign the admonition, the supervisor should indicate "refused to sign" and initial the appropriate signature block. A refusal to sign shall not, by itself, be considered grounds for rejecting a complaint, but may be taken into consideration when determining the manner in which the matter should be handled.

YUBA COUNTY SHERIFF'S DEPARTMENT

Personnel Complaint Procedure

If the complaint is received by telephone, the receiving supervisor should read the admonitions to the complainant and sign the signature block with a notation of the date and time read. If the complainant later appears in person, a second form should be completed and signed by the individual.

1020.3 SUPERVISOR RESPONSIBILITY

A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation.

In general, the primary responsibility for the investigation of a personnel complaint shall rest with the employee's immediate supervisor. However, the Sheriff or authorized designee may direct that another supervisor 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 insure that command staff within the employee's chain of command, up to and including the Sheriff, are notified as soon as practicable.
- (b) A supervisor receiving or initiating any formal complaint shall insure that a Personnel Complaint form has been completed as fully as possible. The original complaint form will then be directed to the Commanding Officer of the accused employee, via the chain of command, who will take appropriate action or forward the matter to the Professional Standards Unit 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 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 the employee's Division Commander or the Sheriff who will initiate appropriate action.
- (c) A supervisor dealing with an accused employee shall insure that the procedural rights of the employee are followed pursuant to Government Code § 3303, et seq.

1020.4 ASSIGNMENT TO ADMINISTRATIVE LEAVE

When a complaint of misconduct is of a serious nature or when circumstances practically dictate that it would impose an unreasonable risk to the Department, the employee, other employees or the public, a supervisor may assign the accused employee to inactive duty pending completion of the investigation or the filing of administrative charges.

1020.41 ADMINISTRATIVE LEAVE

An employee placed on Administrative Leave may be subject to the following guidelines:

YUBA COUNTY SHERIFF'S DEPARTMENT

Personnel Complaint Procedure

- (a) Under such circumstances, 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) It shall be the responsibility of the assigning supervisor to promptly notify the employee's Division Commander and the Sheriff.
- (f) 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.

1020.5 ALLEGATIONS OF CRIMINAL CONDUCT

Where an employee of this department is accused of potential criminal conduct, a separate supervisor or assigned detective shall be assigned to investigate the criminal allegations apart from any administrative investigation. Any separate administrative investigation may parallel a criminal investigation.

The Sheriff shall be notified as soon as practical when an employee is formally accused of criminal conduct. (In the event of serious criminal allegations, the Sheriff 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 and the employee may not be administratively ordered to provide any information to a criminal investigator.

No information or evidence administratively coerced from an employee may be provided to a criminal investigator.

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 [Labor Code § 432.7(b)]. However, no disciplinary action (other than paid administrative leave) shall be taken against the accused employee based solely on an arrest or crime report. An independent administrative investigation shall be conducted based upon the allegations in the report in accordance with department policy.

1020.6 ADMINISTRATIVE INVESTIGATION OF COMPLAINT

Whether conducted by a supervisor or an assigned member of the Professional Standards Unit, the following procedures shall be followed with regard to the accused employee(s):

YUBA COUNTY SHERIFF'S DEPARTMENT

Personnel Complaint Procedure

- (a) Interviews of accused employees shall be conducted during reasonable hours and, if the employee is off-duty, the employee shall be compensated. Government Code § 3303(a).
- (b) No more than two interviewers may ask questions of an accused employee. Government Code § 3303(b).
- (c) Prior to any interview, an employee shall be informed of the nature of the investigation. Government Code § 3303(c).
- (d) All interviews shall be for a reasonable period and the employee's personal needs shall be accommodated. Government Code § 3303(d).
- (e) No employee shall be subjected to offensive or threatening language, nor shall any promises, rewards or other inducements be used to obtain answers. However, any employee refusing to answer questions directly related to the investigation may be ordered to answer questions administratively or be subject to discipline for insubordination. Once again, nothing administratively ordered may be provided to a criminal investigator. Government Code § 3303(e).
- (f) Absent circumstances preventing it, the interviewer should record all interviews of employees and witnesses. The employee may also record the interview. If the employee has been previously interviewed, a copy of that interview shall be provided to the employee prior to any subsequent interview. Government Code § 3303(g).
- (g) If the allegations involve potential criminal conduct, the employee shall be advised of his/her constitutional rights pursuant to Lybarger. This admonishment shall be given administratively whether or not the employee was advised of these rights during any separate criminal investigation. Government Code § 3303(h).
- (h) All employees subjected to interviews that could result in punitive action shall have the right to have an uninvolved representative present during the interview. Government Code § 3303(i).
- (i) All employees shall provide complete and truthful responses to questions posed during interviews.
- (j) No employee may be compelled to submit to a polygraph examination, nor shall any refusal to submit to such examination be mentioned in any investigation. Government Code § 3307.

1020.61 ADMINISTRATIVE SEARCHES

Any employee exhibiting objective symptoms of intoxication or influence and any employee involved in a shooting, death from police action or injury/fatal traffic collision may be administratively ordered to submit to a blood, breath or urine test. The results of such compelled testing shall be restricted to the administrative investigation.

Any employee may be compelled to disclose personal financial information pursuant to proper legal process; if such information tends to indicate a conflict of interest with official duties; or, if the employee is assigned to or being considered for a special assignment with a potential for bribes. Government Code § 3308.

Employees shall have no expectation of privacy when using telephones, computers, radios or other communications provided by the department.

YUBA COUNTY SHERIFF'S DEPARTMENT

Personnel Complaint Procedure

Assigned lockers and storage spaces may only be administratively searched (1) in the employee's presence or, (2) with the employee's consent or, (3) with a valid search warrant or, (4) where the employee has been given reasonable notice that the search will take place (Government Code § 3309).

All other departmentally assigned areas (e.g. desks, office space, assigned vehicles) may be administratively searched by a supervisor, in the presence of an uninvolved witness, for non-investigative purposes. (E.g. obtaining a needed report or radio). An investigative search of such areas shall only be conducted upon a reasonable suspicion that official misconduct is involved.

1020.62 ADMINISTRATIVE INVESTIGATION FORMAT

Investigations of personnel complaints shall be detailed, complete and essentially follow this format:

INTRODUCTION - include the identity of the employee(s), the identity of the assigned investigator(s), the initial date and source of the complaint.

SYNOPSIS - provide a very brief summary of the facts giving rise to the investigation.

SUMMARY OF ALLEGATIONS - list the allegations separately (including applicable policy sections) with a very brief summary of the evidence relevant to each allegation. A separate recommended **FINDING** should be provided for each allegation.

EVIDENCE AS TO EACH ALLEGATION - each allegation should be set forth with the details of the evidence applicable to each allegation provided, including comprehensive summaries of employee and witness statements. Other evidence related to each allegation should also be detailed in this section.

CONCLUSION - a recommendation regarding further action or disposition should be provided.

EXHIBITS - a separate list of exhibits (tapes, photos, documents, etc.) should be attached to the report.

1020.7 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.

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.

YUBA COUNTY SHERIFF'S DEPARTMENT

Personnel Complaint Procedure

NOTE: 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.

1020.8 COMPLETION OF INVESTIGATIONS

Every investigator or supervisor assigned to investigate a personnel complaint shall proceed with due diligence. Recognizing that factors such as witness availability and the complexity of allegations will affect each case, every effort should be made to complete each investigation within thirty (30) days of receipt. 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.

If the complaining party is charged with a criminal offense associated with this investigation, then the investigation may be suspended until the completion of the criminal trial.

Upon completion, the report should be forwarded through the chain of command to the commanding officer of the involved employee(s). Once received, the Sheriff may accept or modify the classification and recommendation for disciplinary action contained in the report.

Within thirty (30) days of the final review by the Sheriff, 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. Penal Code § 832.7.

Any complaining party who is not satisfied with the findings of the Department concerning their complaint may contact the Sheriff in order to discuss the matter further.

1020.91 CONFIDENTIALITY OF PERSONNEL FILES

All investigations of personnel complaints shall be considered confidential peace officer personnel files. The contents of such files shall not be revealed to other than 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 communicated to any media source, the Department may disclose sufficient information from the employee's personnel file to refute such false representations. Penal Code § 832.5.

All formal personnel complaints shall be maintained for a period of no less than five (5) years. Penal Code § 832.5. All non-citizen (i.e. those that originate internally) initiated complaints shall be maintained no less than two (2) years. Government 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 Professional Standards Unit apart from the employee's personnel file.

Exhibit “5”

CONSENT TO SEARCH

I, _____, have been informed by _____ and _____ who made proper identification as (an) authorized law enforcement officers of the Yuba County Sheriff's Department of my CONSTITUTIONAL RIGHT not to have a search made of the premises and property owned by me and/or under my care, custody and control, without a search warrant.

Knowing of my lawful right to refuse to consent to such a search, I willingly give my permission to the above-named officer(s) to conduct a complete search of the premises and property, including all buildings and vehicles, both inside and outside of the property located at _____

The above-said officer(s) further have my permission to take from my premises and property, any letters, papers, materials or any other property or things which they desire as evidence for criminal prosecution in the case or cases under investigation.

This written permission to search without a search warrant is given by me to the above officer(s) voluntarily and without any threats or promises of any kind, at _____ AM/PM on this _____ day of _____ 19__ at _____; California.

Signed _____

WITNESS

ADDRESS

TELEPHONE

OFFICER

YUBA COUNTY SHERIFF'S DEPARTMENT
215 Fifth Street
Marysville, CA 95901
Telephone (916) 741-6331

Exhibit "6"

The County of Yuba

OFFICE OF THE SHERIFF - CORONER



VIRGINIA R. BLACK
Sheriff - Coroner

(530) 741-6331
FAX (530) 741-6445

POLICY FOR COMPLAINTS BY MEMBERS OF THE PUBLIC

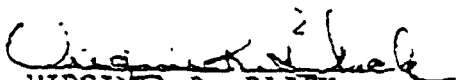
A relationship of trust and confidence between members of the Yuba County Sheriff's Department and the community they serve is essential to effective law enforcement. Law enforcement officers must be free to exercise their best judgment and to initiate enforcement action in a responsible, lawful and impartial manner without fear of reprisal. Enforcers of the law have a special obligation to respect the rights of all persons.

The Yuba County Sheriff's Department acknowledges its responsibility to establish a complaint system and a disciplinary procedure which not only will subject the officer to corrective action when he or she conducts himself or herself improperly, but also will protect him or her from unwarranted criticism when he or she discharge their duties properly. It is the purpose of these procedures to provide a prompt, just and open disposition of complaints regarding the conduct of members and employees of this Department.

It is the policy of the County of Yuba and the Yuba County Sheriff's Department to encourage the public to bring to the attention of the Sheriff's Department, complaints about the conduct of its members whenever a person believes a law enforcement act is improper. Complaints will be received courteously by all on-duty employees of the Sheriff's Department.

The Sheriff's Department will make every effort to insure that no adverse consequences occur to any person or witness as a result of having brought a complaint or having provided information in any investigation of a complaint. Any departmental employee who subjects a complainant or witness to recrimination shall incur appropriate disciplinary action.

Sincerely,


VIRGINIA R. BLACK
SHERIFF-CORONER