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## **False Allegations of Misconduct against Peace Officers Penal Code Section 148.6 (Re-issue DB 10-134)**

In light of a standing conflict between California and Federal law, members shall not make arrests pursuant to Penal Code Section 148.6 unless they have first consulted the District Attorney's Office for a filing decision and obtained an arrest warrant.

P.C. § 148.6 makes it a misdemeanor for a civilian to knowingly file a false complaint of officer misconduct. The California Supreme Court has expressly ruled that P.C. § 148.6 is consistent with the First Amendment. *People v. Stanistreet*, 29 P.3d 465 497, 512 (Cal. 2002). However, the U.S. Ninth Circuit Court of Appeals has since held that P.C. § 148.6 facially violates the First Amendment. *Chaker v. Crogan*, 428 F.3d 1215, 1228 (9th Cir. 2005).

According to the court, P.C. § 148.6 impermissibly discriminates on the basis of viewpoint, because someone who makes knowingly false allegations criticizing an officer's conduct is subject to criminal penalties, but someone who makes knowingly false statements in support of an officer is not.

P.C. § 148.6 is in effect and remains valid under state law because a federal court of appeals' interpretation of constitutional law is not binding on state courts. But the Ninth Circuit's conflicting decision leaves members vulnerable to federal lawsuits. A federal court may determine that an arrest for PC §148.6 violates the arrestee's Fourth Amendment right to be free from an unreasonable seizure, and the arresting officer may be held personally liable for that unlawful arrest.

  
WILLIAM SCOTT  
Chief of Police

*Per DB 17-080, sworn members are required to electronically acknowledge receipt and review of this Department Bulletin in HRMS.*