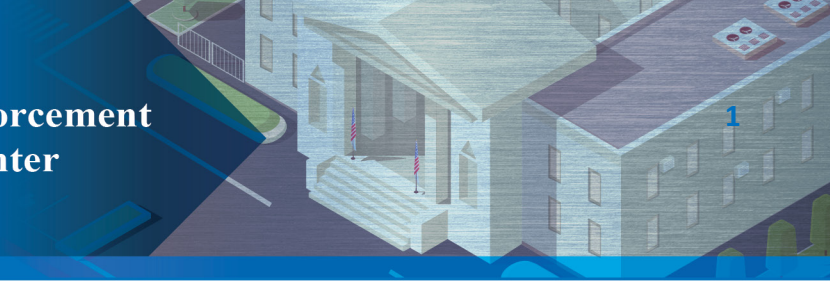


Investigation of Allegations of Employee Misconduct

April 2019

The IACP Law Enforcement Policy Center creates four types of documents: Model Policies, Considerations Documents, Concepts & Issues Papers, and Need to Know one-page summaries. Typically, for each topic, either a Model Policy or a Considerations Document is created, supplemented with a Concepts & Issues Paper. This file contains the following documents:

- **Model Policy**: Provides police agencies with concrete guidance and directives by describing in sequential format the manner in which actions, tasks, and operations are to be performed.
- **Concepts & Issues Paper**: Designed to provide context and background information to support a Model Policy or Considerations Document for a deeper understanding of the topic.
- **Need to Know...**: Synthesizes the key points of the topic into a brief, one-page overview. This document is developed by Policy Center staff following the final approval of the policy and paper.



Model Policy

Updated: April 2019

Investigation of Allegations of Employee Misconduct

I. PURPOSE

Establishment of procedures for investigating complaints and allegations of employee misconduct is crucial to demonstrate and protect a law enforcement agency's integrity. The purpose of this policy is to inform all employees and the public of procedures for accepting, processing, and investigating complaints concerning allegations of employee misconduct. This policy defines provisions applicable only to investigation and disposition of allegations of administrative misconduct.

II. POLICY

It is the policy of this agency to accept and fairly and impartially investigate all complaints of employee misconduct to determine the validity of allegations and to impose any corrective actions that may be justified in a timely and consistent manner.

III. DEFINITIONS

Administrative Investigation: An internal investigation conducted in response to a complaint with the goal of determining whether an employee violated agency policy.

Complaint: An allegation of misconduct against an employee or that expresses concern about services provided by the employee. These allegations may be submitted from both external and internal sources.

Corrective Action: Response to employee misconduct that may include counseling, additional training, and/or disciplinary action.

Office of Professional Standards (OPS): The designated employee(s) or unit, which may be external to the agency, with primary responsibility for monitoring adherence of employees to agency policy, procedures, and rules and for conducting investigations of employee misconduct allegations.¹

Summary Action: Corrective action taken by an employee's supervisor or commander for lesser violations of agency rules, policies, or procedures as defined by this agency. Summary actions are the lowest level of corrective action generally handled by first-line supervisors.

¹ This may also be referred to as internal affairs or professional responsibility.

IV. PROCEDURES

A. Acceptance and Filing of Complaints

1. Complaint forms shall be made available through agency personnel, at designated public facilities, and via the Internet.
2. Complaints may be received either in person, over the telephone, in writing, or via the Internet, and may be lodged anonymously or by any other means without regard to the source.
3. Employees shall provide assistance to individuals who express the desire to lodge complaints against any employee of this agency. This may include, but is not limited to,
 - a. calling a supervisor to the scene to document the complaint;
 - b. explaining the agency's complaint procedures;
 - c. providing referrals to individuals and/or locations where such complaints can be made in person; or
 - d. explaining alternative means for lodging complaints, such as by phone, mail, and via the Internet.
4. The complainant shall be advised of the procedures for processing the complaint and provided with a copy of the complaint.
5. The complainant should be asked to verify by signature if the complaint is a complete and accurate account. If the complainant elects not to sign, this fact shall be documented and forwarded to OPS and the agency chief executive or their designee and the investigative process should proceed.

B. Preliminary Assessment of Complaints

If a complaint is received by a supervisor in the field, the supervisor should conduct a preliminary assessment to determine if grounds exist to conduct an administrative investigation.² This preliminary assessment may include interviewing the complainant and/or any witnesses to the alleged misconduct.

1. If the inquiry finds that agency policy and procedures have been followed, the supervisor shall explain to the complainant any investigative steps that were taken by the agency together with the relevant findings and conclusions. The supervisor should explain agency procedures, a misunderstanding of which may have precipitated the complaint.
2. If the preliminary investigation identifies grounds that may support corrective action, the supervisor shall initiate further investigation of the complaint and shall notify OPS of this action.
3. Should an investigation at any time reveal evidence of criminal conduct, all available information shall be forwarded to the agency chief executive employee or their designee and to OPS as soon as possible.

C. Investigative Interviews of Employees and Procedures

1. Prior to being interviewed, the subject employee should be advised of the nature of the complaint.
2. All interviews should be conducted while the employee is on regularly scheduled duty hours, unless the seriousness of the investigation is such that an immediate interview is required.
3. The complete interview shall be recorded. Where necessary, the recording shall note the time at which breaks are taken in the interview process, who requested the break, and the time at which the interview resumed.

² It is imperative that the agency specifically define which allegations can be investigated by a line supervisor and those that must be forwarded to OPS.

4. The employee shall be provided with the name, rank and command of all persons present during the questioning.
5. The employee shall be provided with applicable warnings regarding compelled statements.
6. Employees may have a personal or professional representative with them during any internal investigative interview, as long as the individual is not involved in any manner with the incident under investigation.
7. Examinations and searches:
 - a. The employer may direct that the employee submit to a breath, urine, or polygraph examination if not prohibited by law or collective bargaining agreement and it is believed that such an examination is pertinent to the investigation and/or there is reasonable suspicion that alcohol and/or drug usage is suspected as the factor directly related to allegations of misconduct subject to applicable laws.
 - b. An employee can be required to participate in a lineup if it is used solely for administrative purposes.
 - c. Property belonging to the agency is subject to inspection for investigative purposes unless the employee has been granted a reasonable expectation of privacy, such as a purse, briefcase, or locked luggage.

D. Disposition³

1. The primary investigative authority for the investigation (i.e., subject employee's supervisor or OPS) shall review the complaint and investigative findings once deemed complete. This authority will compile a report of findings and provide a disposition recommendation for each charge as follows:
 - a. Sustained: Evidence sufficient to prove allegations.
 - b. Not sustained: Insufficient evidence to either prove or disprove allegations.
 - c. Exonerated: Incident occurred but was lawful and within policy.
 - d. Unfounded: Allegation is false or not factual or the employee was not involved.
 - e. Policy Failure: The incident occurred but was lawful and proper in accordance with policy and procedure; however, a review of such policies and/or additional training is necessary to prevent future allegations of misconduct. The employee is considered exonerated.
2. If OPS is not the primary investigative authority, a copy of the findings and recommendations shall be submitted for review by OPS prior to submission to the agency chief executive. OPS may make any additional inquiries or investigative measures deemed necessary to verify, authenticate, or clarify findings and recommendations of the investigative report.
3. All investigation findings and recommendations shall be forwarded to the agency chief executive through the chain of command for information, review, and comment.
4. The chief executive or their designee shall review the investigative report and supporting documents and may accept the findings and recommendations or remand the case for additional investigation in all or in part.
5. If the investigation determines that a policy failure occurred, any necessary policy review and updates shall be completed and disseminated to all employees as soon as possible.
6. If the complaint is sustained, and it is determined that formal administrative charges shall be brought, a formal document shall be prepared by the subject employee's commander, supervisor, or OPS, as appropriate; signed; and served upon the subject employee. This formal document will provide:

³ Note that, in some jurisdictions, it may be the employer, such as the city or county, who is responsible for these items, rather than the chief executive or their designee.

- a. the nature of the administrative charges,
 - b. a copy of the investigative file, and
 - c. the designated time period in which the employee can respond to the charges and the required format of the response (written or oral).
7. The employee may appeal the proposed charges as provided by law, ordinance, collective bargaining agreement, or agency or governing jurisdiction procedure.
8. Employees who desire an opportunity to be heard on these proposed charges may make a request for a hearing to the agency chief executive or their designee within the time period permitted for this action.
9. Following a hearing or written response of the subject employee to the charges, the chief executive or their designee shall determine an appropriate disposition of the charges or may remand the case for further investigation or related actions.
10. The disposition shall be returned from the chief executive or their designee to the commanding officer to take such corrective action as required.
11. The commanding officer shall verify to the supervisor, OPS, and the agency's personnel authority when the authorized corrective action has been taken. A written copy of the disposition shall be provided to the subject employee.
12. For line-level supervisory investigations, where the findings do not support the charges, the commanding officer shall forward the complaint with supporting documentation to OPS for reporting and accounting purposes. A copy will also be provided to the subject employee.
13. Following final disposition of the complaint, a letter shall be sent to the complainant from the chief executive or their designee explaining the final disposition.
14. Whenever reasonably possible, the investigation of complaints should be completed within a designated period of time from receipt of the complaint to its disposition unless a waiver is granted by the chief executive or their designee or another time frame is required or allowed by agency policy, law, or labor agreement.

E. Basis for Corrective Action

1. Employees are subject to corrective action for violations of law or agency policy, rules, or regulations.
2. All corrective actions are subject to, and shall be consistent with, applicable law, local ordinances, administrative rulings, and collective bargaining agreements.
3. Employees who withhold information from, or fail to cooperate with, internal investigations or who fail to report misconduct of employees are subject to disciplinary action, in addition to any other corrective action that may result from the investigation.
4. Summary action:
 - a. Summary action may be taken by supervisory personnel for lesser violations of rules, policies, or procedures, as appropriately defined by this agency.
 - b. All summary actions shall be documented in accordance with approved agency policy.

F. OPS Role

1. OPS has primary responsibility for review and investigation of all complaints against employees, whether initiated by the public or by a member of the agency.
2. OPS may assume primary responsibility for a supervisor's complaint investigation at any stage in the investigative process upon notification of the supervisor involved.

3. OPS may initiate an investigation of alleged employee misconduct, with or without a formal complaint, with prior knowledge and approval of the agency chief executive employee or their designee.
4. OPS shall be informed of all final corrective action decisions and shall forward a copy of all final corrective action decisions to the agency's personnel authority.
5. OPS shall be responsible for
 - a. maintaining a complaint log;
 - b. maintaining a central file for complaints in a secured area, separate from personnel records, and in conformity with applicable records retention requirements;
 - c. conducting a regular audit of complaints to ascertain the need for changes in training or policy;
 - d. maintaining statistical and related information to identify trends involving all complaints of excessive force and abuse of authority;
 - e. tracking complaints against individual employees to assist in employee risk analysis; and
 - f. providing the chief executive or their designee with an annual summary of complaints against employees and final dispositions that may be made available to the public or otherwise used at the discretion of the chief executive employee.
6. OPS information is considered confidential and shall be retained under secure conditions.
 - g. OPS case files and personnel dispositions shall not be released to any source without prior approval of the agency chief executive unless otherwise provided by law.
 - h. Case investigation files shall be retained for a period of time as defined by law or agency policy.

Every effort has been made by the IACP Law Enforcement Policy Center staff and advisory board to ensure that this model policy incorporates the most current information and contemporary professional judgment on this issue. However, law enforcement administrators should be cautioned that no model policy can meet all the needs of any given law enforcement agency. In addition, the formulation of specific agency policies must take into account local political and community perspectives and customs, prerogatives, and demands; often divergent law enforcement strategies and philosophies; and the impact of varied agency resource capabilities, among other factors. Readers outside of the United States should note that, while this document promotes procedures reflective of a democratic society, its legal basis follows United States Supreme Court rulings and other federal laws and statutes. Law enforcement administrators should be cautioned that each law enforcement agency operates in a unique environment of court rulings, state laws, local ordinances, regulations, judicial and administrative decisions, and collective bargaining agreements that must be considered and should therefore consult their legal advisor before implementing any policy.

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Concepts & Issues

Updated: April 2019

Investigation of Allegations of Employee Misconduct

I. INTRODUCTION

A. Purpose of the Document

This document was designed to accompany the Model Policy on Investigation of Allegations of Employee Misconduct established by the IACP Law Enforcement Policy Center. This paper provides essential background material and supporting documentation to provide greater understanding of the developmental philosophy and implementation requirements for the model policy. This material will be of value to law enforcement executives in their efforts to tailor the model to the requirements and circumstances of their communities and their law enforcement agencies.

This document is intended to focus on provisions applicable only to investigation and disposition of allegations of administrative misconduct.

B. Background

Law enforcement officers possess unique powers and discretion to take actions that require professional supervision, management, oversight, control, and adherence of officers to a rigid code of conduct and professionalism. In response to this, law enforcement agencies have a duty to fully and completely investigate allegations of employee misconduct.

Through the development of policies and procedures to detect and respond to instances of employee misconduct, a law enforcement agency can protect its interests and reputation, promote public trust, ensure that heightened integrity remains a mainstay of the law enforcement profession, and mitigate potential civil litigation.

To be effective, internal investigation and disciplinary procedures must be consistently applied to all employees in an equitable manner. Inconsistent discipline can undermine the entire disciplinary process and lead to charges of disparate treatment and civil litigation. In addition, all employees should be provided with regular training and guidance to foster increased understanding and acknowledgement of agency policy on this topic.

Law enforcement agencies have the responsibility and duty to conduct internal investigations of allegations of misconduct in accordance with the law and professionally accepted practices. An employee who is the subject of an internal investigation retains certain rights, which may vary according to applicable law or the terms of a collective bargaining agreement. In addition, the characterization of the investigation as administrative or criminal will determine the applicable rules.¹

¹ Several U.S. state legislatures have enacted legislation addressing the various rights guaranteed to law enforcement officers during their employment. These legislative acts are generally known as Peace Officers' Bill of Rights and generally incorporate the rights of officers who are under investigation for misconduct.

Individual agencies often have widely varying procedures and styles in this area, and some of these differences are the product of individual applicable law, employment contracts, jurisdictional civil service requirements, and related matters. While this document cannot account for all of the terms of these requirements and agreements, it provides the essential components of a well-administered, professional program governing internal investigations and disciplinary procedures.

This document provides guidance on an investigative system that (1) draws supervisory personnel into the investigation of employee complaints; (2) allows minor infractions and issues related to poor performance to be handled by supervisory personnel and their immediate commanding officer without the requirement to involve office of professional standards (OPS) personnel in every complaint; and (3) includes checks and balances during the process to ensure that all complaints are dealt with fully, fairly, and impartially.²

C. Community Relations

Some members of the public are unaware that the complaint process exists. The need for increased transparency regarding the complaint process and ultimate disposition of complaints is even more apparent with the availability of Internet and social media options that permit timely and open access and dialogue with the public.

Failure to address public complaints or involve the public in this process can result in officers who are hostile or overly aggressive to remain in their positions of authority and to continue to abuse that authority. In addition, incidents of discriminatory behavior by law enforcement personnel that are not identified and appropriately addressed could increasingly alienate large segments of the population.

Public trust and confidence are built when the public perceives that employee misconduct is addressed and corrected by the agency. This, in turn, promotes public willingness to assist the agency in carrying out its mission. In a climate that fosters trust and transparency between the public and law enforcement, citizens are more likely to come forward to testify, provide evidence of criminal acts, and contribute other needed assistance in reducing crime.

D. General Disciplinary Concepts

Generally, human beings respond to praise more positively than to criticism and punishment. The use of threats of punishment alone to gain compliance with policy does not encourage excellence or promote the efficient delivery of law enforcement services.

The concept of discipline functions on the premise that a proven allegation of misconduct receives immediate punishment. This style is reactive because employee misconduct is addressed only after it has occurred. The disciplinary process itself is an end and not a means of educating employees about appropriate types of behavior or a way to explain why certain standards are necessary.

Instead, agencies should consider shifting focus to determining why misconduct occurred, rather than focusing solely on taking measures to punish misconduct. By using this approach, each case is analyzed to determine the cause of misconduct and identify remedial recommendations in addition to or in place of punitive actions. This approach may also include reinforcement of exemplary behavior by maintaining a reward system comprising special agency commendations and medals or by recognition during performance reviews or similar means.

Finally, it should be noted that training can be an effective approach to address misconduct. Some disciplinary matters are largely a product of inadequate training; a failure by employees to master what is being taught; inability to maintain specific skills and abilities; or difficulty remembering how to follow specific practices, protocols, or procedures. For them, refresher training may be more effective and appropriate than punishment.

² Note that the term Office of Professional Standards (OPS) is used in this document to describe the designated employee(s) or unit, which may be external to the agency, with primary responsibility for monitoring adherence of employees to agency policy, procedures, and rules and for conducting investigations of employee misconduct allegations. This may also be referred to as internal affairs or professional responsibility.

Disciplinary “Schedules.” In order to achieve consistency, fairness, and objectivity in discipline, some agencies use a system of graduated discipline. This typically involves the use of tables or schedules of penalties for one or more infractions or breaches of conduct, policy, procedures, or rules. There are arguments both for and against this type of uniformity.

On the one hand, it provides employees with a general idea of what they can expect for committing certain types of infractions. Major departures from the disciplinary schedule for these infractions are readily apparent—a factor that also serves as a check on decision-making. However, administration of discipline strictly on a formula basis might not take into account the totality of the circumstances of the event or the performance history of the individual employee(s). Therefore, disciplinary systems that rely solely on administration of discipline by formula can be too inflexible and thus unfair.

The availability of a scale of disciplinary actions for various types of misconduct provides some general controls over inappropriate use of administrative discretion. If punishment for misconduct deviates from what is perceived to be the norm, a written explanation should be made explaining the decision-making process that supported the alternate action. The scale can be used with the understanding that unusual circumstances may require departures from the schedule and that the reasons for such departures will be fully explained to those involved.

II. RECEIVING AND PROCESSING COMPLAINTS

A. Responsibility for Complaint Investigation and Review

Traditionally, investigating employee misconduct has been the responsibility of the individual(s) or unit responsible for the agency’s internal investigative function. While sometimes referred to as internal affairs or office of professional responsibility, OPS is used in this document to describe this function. While some agencies may have a separate unit that is solely responsible for conducting internal investigations, smaller agencies are typically unable to staff a separate unit.

These agencies may utilize resources from their jurisdiction, such as a city OPS function. Alternatively, they may elect to designate an employee(s) to conduct all internal investigations on an ad hoc basis or rotate this responsibility among selected investigators as the need arises.

Where information is available, compiled and summarized, OPS can identify potential problems with agency policy, training, supervision, and other functions. In addition, OPS may also be tasked with identifying ways the agency and employees can avoid problems and correct shortcomings before they rise to the level of a complaint.

OPS should have direct access to, and report directly to, the chief executive officer or their designee. The goal of this is to ensure the integrity of internal investigations into allegations of misconduct is protected, as such investigations may unearth sensitive and confidential information. Access to investigative information must be closely guarded and limited to those personnel with a need and right to know. The release of this sensitive information via social media or to other unauthorized employees or members of the general public must be investigated and appropriately addressed.

The process of conducting internal investigations must also guard against personal influence or bias. Identifying a single entity to conduct all internal investigations enables a greater chance for consistency, fair, and equitable treatment between cases.

OPS personnel should receive formal training in conducting accurate, unbiased, and fair investigations, and should be acutely familiar with agency policy and legal guidelines. In addition, internal investigators should have a firm grasp of applicable Peace Officers’ Bill of Rights, use of instruments to detect deception, the range of other operations and practices that influence the investigative process, as well as local collective bargaining agreements, and civil service requirements.

Public Review Boards. Some agencies have developed distinct units outside their agencies in order to facilitate the public complaint review process. These units are usually staffed exclusively by members of the public, such as

community leaders and politicians or by a combination of law enforcement employees and the public. Proponents of external complaint review units cite the value of injecting an independent and objective voice in assessing and remedying employee misconduct and state that these processes promote transparency and public trust. The argument for this approach is that the public gains confidence that misconduct is fairly and adequately addressed where they participate directly in the complaint review system.

Opponents of external complaint review units highlight the concern that many members of public review boards are not thoroughly versed in agency policy or with the procedural guidelines outlined within criminal procedure codes and laws that grant law enforcement officers, either nationally or locally, with the authority to take certain measures involving search and seizure, arrest, use of force, or other authorized and legally permitted law enforcement actions.

B. Duties of OPS

The primary responsibility for review and investigation of complaints and allegations against employees lies with OPS, whether the complaint or allegation is initiated by a member of the public, someone in the agency, or another governmental agency. OPS may, for example, assume responsibility for an investigation upon notification from a supervisor of the complaint or allegation, or upon its own initiative once the complaint is registered with the agency. However, OPS can take the initiative to conduct internal investigations of its own that are not generated by one of the foregoing sources if given prior approval by the agency's chief executive or their designee.

In addition to its conduct of, or participation in, investigations of alleged employee misconduct, OPS should also be responsible for the following:

- Maintaining a complaint log.
- Maintaining a central file of complaints received. This file should be stored in a secure area with limited access. These records should be maintained in accordance with any records retention requirements imposed by law or other legal requirements and separate from an employee's personnel file.
- Compiling statistical and related information to identify trends in complaints involving use of excessive force, unprofessional conduct, discriminatory conduct, abuse of authority, and other forms of misconduct.³

Analysis of documented public complaints and their disposition may provide the agency with critical information pertaining to the need for increased training and policy development or refinement on an agencywide basis. This analysis may provide evidence of a pattern of misconduct by an employee or employees and serve as one component of a more comprehensive system for identifying problematic patterns of employee behavior and conduct that warrant attention and possible intervention.⁴ Analysis may also illuminate malfunctions in the disciplinary process itself that may be corrected, such as inconsistent discipline.

OPS should provide the chief executive with an annual summary of complaints against employees and the disposition of those complaints. This summary may be made available to the public or used in other ways as directed by the chief executive, such as addressing public concerns or adhering to any applicable accreditation standards. Any reports provided to the public should not name the employees involved but should provide a summary of the nature of the complaints and dispositions. Increased education and transparency about the public complaint process and the daily operations of the law enforcement agency will help the public better understand law enforcement procedures.

³ See the IACP Policy Center documents on Unbiased Policing available at <https://www.theiacp.org/resources/policy-center-resource/unbiased-policing>

⁴ See the IACP Policy Center documents on Early Identification System available at <https://www.theiacp.org/resources/policy-center-resource/early-identification-system>

C. Accepting and Filing Complaints

Although allegations of misconduct may come from within the agency, as well as from external sources, the primary focus here is upon the handling of complaints from members of the public.

Receipt of Complaint. The process for filing a complaint should be easily available and understood by members of the public. This includes complaint procedures and how and/or with whom complaints may be filed. Complaints should be accepted directly from the complainant in person, by telephone, in writing, via email, or online where available. Anonymous complaints should also be accepted and reviewed. In addition, allegations of serious misconduct made against law enforcement personnel via social or traditional media, documented within litigation filed against members of the agency, or identified through other means should be documented and reviewed for further appropriate action.

Law enforcement agencies should allow initial complaints from members of the public to be received by any employee. However, when someone expresses to a non-supervisory employee a desire to make a complaint, the matter should be referred to a supervisor, where possible.

All allegations of employee misconduct should be recorded and reviewed by OPS. This does not mean that a full-scale investigation of every public complaint should be launched, but at a minimum each should be reviewed to determine whether it merits further investigation and that agency policies and procedures have been followed. Acceptance and review or potential investigation of all public complaints is vital in efforts to further the law enforcement goal of building and maintaining a positive working relationship with the community.

Each complaint should receive a unique tracking number and be screened for pertinent information and potential violations of agency policy and procedures. Even complaints involving misunderstandings may contain information of value. Examination of all public complaints allows the law enforcement agency to determine if a number of complaints form a pattern that should be addressed in another appropriate manner.

Complaint Forms. Public complaint packages should contain complaint forms, information on the agency's complaint procedures, and an explanation of the action and timelines that the complainant can expect. These packages should be made available to the public directly through agency personnel, at designated public locations, and online via the agency and/or jurisdiction's website or through social media outlets. Permitting online submission of public complaints will enhance the confidentiality of the complaint. However, some members of the public may opt for posting anonymous allegations via publicly viewable social media sites.

Use of a customized complaint form is suggested. Actions forming the basis for a public complaint may also form the basis for litigation against the public entity, employing agency, or employee for a violation of individual rights and should therefore be captured in as much details as possible on the complaint form. Full documentation of the complaint helps the agency establish that the facts as reported to them were received and then acted upon to the fullest extent of the agency's abilities.

Comprehensive documentation also allows the agency to record any instances where a complainant revises their story. Where the complainant has fraudulently filed a public complaint, the employee or agency may decide to take legal action against the complainant. The documented complaint may be used to prove these charges. To guard against false complaints, some employees advise the complainant of the penalties for filing a false complaint. This is not recommended as a general practice. However, agencies may wish to include notices regarding false complaints on their complaint forms or other information provided to the public. In cases where complainants are found to have intentionally and knowingly filed false reports of misconduct, the agency chief executive or their designee should review the incident for further action, if necessary.

Provide Complainant with a Copy of the Complaint. The complainant should receive a copy of the complaint as filed and should be asked to verify by signature that the information provided on the complaint form is a complete and accurate account of the events involved. If the complainant elects not to sign, this should be documented and forwarded to OPS and the agency chief executive or their designee. The investigative process should proceed.

Explain Complaint Process to Complainant. The complainant should be given information regarding the complaint process and the appropriate agency contact for any questions and be informed that they will be contacted in writing about the final disposition. In addition, the process for filing complaints against agency personnel should be outlined on the agency's or jurisdiction's webpage.

If the complaint is taken by a supervisor who recognizes that the actions taken by the employee(s) were appropriate and in accordance with existing agency policy and procedures, the supervisor should explain this to the complainant. The supervisor may explain to the complainant the policies and procedures in question in the event that a simple misunderstanding has precipitated the complaint. In many cases, complainants are not adequately familiar with applicable laws and with constitutional authorities that have been granted to law enforcement personnel.

However, this in no measure implies that the explanation should be used as a means of talking the individual out of filing a complaint should they desire to do so. In fact, the complaint should always be documented for screening irrespective of other immediate steps by the supervisor to explain the events or actions of the employee.

It is important for agency personnel to recognize that transparency and communication with members of the public are the building blocks of trust between the police and the community. Taking the time to communicate effectively to the complainant, regardless of the outcome of the complaint, will help build relationships, educate the public, and promote a more positive work environment for employees.

Distinguish between Service vs. Personnel Complaints. Some law enforcement agencies classify complaints as either "service" or "personnel" depending on the issue(s) involved. Service complaints or concerns are those associated with the way law enforcement services are provided. A common example is a complaint over response time to a call for service. Many of these types of public complaints may be handled in the internal investigative process somewhat differently from those involving personnel action or inaction directly with a member of the public.

Internal Complaints. Employees should be required by agency policy to report misconduct by other employees of the agency.⁵ Agencies should facilitate internal reporting practices by providing employees with anonymous or confidential reporting protocols. Reasonable measures should be taken to protect the identity of any employee who reports misconduct or behavior that could jeopardize the lives, safety, and well-being of employees or the public, or damage the agency's reputation. The agency should also make it known and clearly demonstrate that any employee who attempts to interfere with or retaliate against an employee or other employee who makes such reports will be dealt with through administrative regulations or criminal proceedings where indicated.⁶

D. Role of the Supervisor

Wherever possible, OPS should be given primary responsibility for the investigation of complaints and allegations. However, when a complaint is initially received by supervisor or where an agency does not have an OPS, the initial responsibility for complaint review should lie with the supervisor receiving or reviewing the complaint. Under this approach, supervisors conduct a preliminary inquiry to determine if grounds exist for initiating a full administrative investigation. This preliminary assessment may include interviewing the complainant and/or any witnesses to the alleged misconduct.

If the supervisor's preliminary investigation discovers issues that may support a charge of misconduct, the supervisor should notify OPS of the information uncovered and the actions that are being undertaken. If the preliminary investigation reveals evidence of criminal conduct by an employee, all available information should be forwarded to both OPS and the agency chief executive immediately and investigation of the complaint should be turned over to the appropriate criminal investigative authority. In addition, the agency chief executive should consider whether the

⁵ See the IACP Policy Center documents on Standards of Conduct available at <https://www.theiacp.org/resources/policy-center-resource/standards-of-conduct>

⁶ See the IACP Policy Center documents on Retaliatory Conduct by Employees available at <https://www.theiacp.org/resources/policy-center-resource/retaliatory-conduct>.

allegation, particularly if supported by evidence, may require notice to the local prosecutor or other appropriate entity due to the seriousness of the allegation(s) made.

However, OPS may assume concurrent or sole authority over the investigation of any allegation of misconduct at any time or at any point in a supervisor's investigation. In doing so, OPS must notify the involved supervisor of this action. These actions should be taken by OPS only where unusual circumstances or facts of the incident warrant intervention. The overall purpose for allowing OPS to intervene in this manner is to provide a check against any potential charges of supervisory inaction or failure to pursue an investigation in a diligent manner.

In the vast majority of cases, employee misconduct does not rise to the level of an offense for which suspension, dismissal, or similarly serious disciplinary action is appropriate. Rather corrective action, to include additional training or counseling, may be a more useful option. For example, the employee may simply need a refresher on agency policies and other acts of mentoring to correct relatively minor problems. The supervisor is often in the best position to ascertain if these specific measures would be most effective and to administer them in an appropriate manner given the circumstances.

Thus, in many agencies the employee's immediate supervisor is given a major role in the investigative and disciplinary process. For example, first-line supervisors may be authorized to give the offending employee a verbal or written reprimand for minor infractions or for more serious infractions that still might not merit action through the agency's formal disciplinary process. Even in more serious instances, the employee's supervisor may be asked to offer recommendations for disposition of the case.

This system permits a more efficient and rational allocation of internal investigative manpower. Agencies that adopt this or a similar approach should provide both supervisors and OPS personnel with general guidelines and training concerning the types of complaints that should normally be handled by each.

III. THE INVESTIGATIVE PROCESS

A. Investigative Procedures

Administrative vs. Criminal Investigations – United States Considerations. Where the allegation of employee misconduct may involve a violation of criminal law, different considerations apply, and more stringent employee rights are generally guaranteed. For example, an employee who is to be questioned in a criminal investigation must be read their Miranda rights before questioning begins, and those dictates must be honored during the interview. If in a criminal investigation the employee invokes their Miranda rights, that employee may not be disciplined for invocation of those rights.

By contrast, questioning an employee during a purely administrative investigation into non-criminal violations invokes what are known as "Reverse Miranda" rights. Prior to questioning, employees must be informed that they are not entitled to remain silent and must truthfully answer questions narrowly, specifically, and directly related to the performance of their official duties. Failure to answer these narrowly focused questions provides the agency with grounds for invoking discipline up to and including discharge from service for failure of the employee to respond to a direct order.

In an effort to ensure that employees are encouraged to answer all questions, employees may be given "use immunity" in return for a waiver of their right against self-incrimination during the administrative investigation. However, law enforcement personnel must be advised that, with the exception of false statements made by the employee, if the employee is prosecuted for a federal criminal civil rights violation, such statements may be used for

impeachment purposes.⁷ Also, the admissions may be used as the basis for administrative charges for any agency policies that may have been breached.

Notification to Employee. Prior to being interviewed, employees should be informed of the nature of the complaint against them. However, there may be some instances where this notification would directly interfere with the integrity of the investigation, such as when the investigation is in response to alleged lying by the employee. The employee under investigation should have the opportunity to contact the investigating authority to ascertain the status of the investigation. It is important for agencies to be aware of applicable laws in their jurisdictions that may require employees be notified of the nature of the complaint against them.

Interviewing Employees. Whenever possible, all interviews should be conducted during the on-duty hours of the subject employee, unless the seriousness of the investigation is such that an interview during off-duty time is required. In many instances, this may be required by law or collective bargaining agreements.

An employee under investigation may bring a personal or professional representative into an internal interview. The representative may be an attorney, union representative, supervisor, or other person chosen by the employee, based on applicable law or collective bargaining agreements. Some law enforcement agencies permit an employee under investigation to be accompanied only by a supervisor or union representative. However, such representative(s) should not be connected with the incident under investigation. In general, the role of the interviewee's representative is primarily that of observer. They should be advised not to intervene in the interview unless requested to do so by the interviewers or the employee, or unless the interview leads to issues of criminal activity.

All interviews should be recorded in their entirety. If breaks are taken, a notation should be made on the recording concerning the time that the break was taken, who requested it, and the time at which the interview resumed. When the interview resumes, the interviewer should consider asking the interviewee to confirm, on the record, that no discussions or questioning regarding the investigation occurred during the break.

At the commencement of the interview, the employee under investigation should be provided with any applicable warnings regarding compelled statements, such as those outlined by law. For instance, in the United States, the following warning may be used:

- You are advised that this is an internal administrative investigation only.
- You will be asked and required to answer questions specifically related to the performance of your duties, your adherence to agency policy, and your fitness for office.
- If you refuse to answer these questions, you may be subject to discipline that can be as much as discharge or removal from office. You may also be subject to discipline for knowingly giving false statements.
- Any answers given are intended to be used solely for internal administrative purposes and may not be used in any subsequent criminal proceedings should such occur.

Examinations and Searches. The agency may require an employee under investigation to undergo a breath, urine, or polygraph examination if not prohibited by law or collective bargaining agreement and if it is believed that such an examination is pertinent to the investigation. An employee can also be required to participate in a lineup if it is to be used solely for administrative purposes.⁸ In addition, an on-duty supervisor should be permitted to direct an employee to

⁷ For instance, see *McKinley v. City of Mansfield*, 404 F.3d 418 (6th Cir. 2005); *U.S. v. Veal*, 153 F.3d 1233 (11th Cir. 1998); *FOP Lodge No. 5 v. City of Philadelphia*, 859 F.2d 276 (3rd Cir. 1988); *U.S. v. Devitt*, 499 F.2d 135 (7th Cir. 1974); and *U.S. ex. rel. Annunziato v. Deegan*, 440 F.2d 304 (2nd Cir. 1971).

⁸ For suggested lineup procedures, see the IACP Policy Center documents on Eyewitness Identification available at <https://www.theiacp.org/resources/policy-center-resource/eyewitness-identification>.

submit immediately to a breath or urine test when there is reasonable suspicion in the line of duty that alcohol or drug usage is directly related to a public complaint or other misconduct.⁹

Where a polygraph examination is used as part of an internal investigation, specific limits should be placed on the scope of the questioning. Employees should be asked only those questions that are narrowly related to the performance of their official duties.¹⁰ The employee must be advised prior to the polygraph test that failure to answer questions truthfully could result in discipline up to and including discharge. Use immunity for admissions of a criminal nature must be explained and a waiver obtained as in normal face-to-face questioning.

With regard to searches, property belonging to the agency is normally subject to inspection for investigative purposes. This may include vehicles, desks, files, storage lockers, cellphones, computers, email messages, mobile data terminal transmissions, or other items or locations that are the property of the agency. However, this right to inspect applies only to items in which the employee does not have a reasonable expectation of privacy and does not extend to areas such as a purse, briefcase, or locked luggage. Authorization to search should be restricted to a search for evidence of work-related misconduct and should extend only to agency property, (e.g., those areas and items that are related to work and are generally within the employer's control).¹¹ Even when the item or location is agency property, a search might not be legal without first obtaining a search warrant. This is the case if the employee has established a reasonable expectation of privacy by law, by agency regulations or operating procedures, or by custom or practice of the agency where formal policy to the contrary has not been established.

B. Disposition Following Investigation

Review and Recommendation. After the investigation is complete, the primary investigative authority should review the complaint report and the investigative findings relative to the complaint, compile a report of findings, and provide a disposition recommendation for each charge.

There are four possible dispositions for consideration in making these decisions.

- *Sustained:* There is sufficient evidence to prove the allegations.
- *Not sustained:* There is insufficient evidence to either prove or disprove the allegations.
- *Exonerated:* The incident occurred but was lawful and within policy.
- *Unfounded:* The allegation was false or not factual or the accused employee was not involved in the incident.
- *Policy Failure:* The incident occurred but was lawful and proper in accordance with policy and procedure; however, a review of such policies and/or additional training is necessary to prevent future allegations of misconduct.

Review and Forwarding of Report. If OPS is not the primary investigative authority, a copy of the investigator's findings and recommendations should be submitted for review to OPS prior to submission to the agency chief executive. Thereafter, OPS may make any additional inquiries or conduct any investigation deemed necessary to verify, authenticate, or clarify the findings and recommendations of the investigative report. The report should then be forwarded to the chief executive through the chain of command for information, review, and comment.

Actions of Chief Executive. Upon receipt of the report, the chief executive should review the report and supporting documents and choose either to accept the findings and recommendations of the report or to remand the case for additional investigation, all or in part. In situations where it is determined that a policy failure occurred, any required

⁹ See the IACP Policy Center documents on Employee Drug Policy available at <https://www.theiacp.org/resources/policy-center-resource/employee-drug-policy>.

¹⁰ For more discussion, see the IACP Policy Center documents on Polygraph Examinations available at <https://www.theiacp.org/resources/policy-center-resource/polygraph-examinations>.

¹¹ *O'Connor v. Ortega*, 480 U.S. 709 (1987).

policy review and updates should be completed and disseminated to all employees as soon as possible. Additional training on the updated guidance should also be considered.

If the complaint is sustained, the chief executive should determine whether administrative charges should be brought. If there is an affirmative finding on this matter, the chief executive or their designee should direct that a formal document be prepared by the employee's commander, supervisor, or OPS, as appropriate. This document must be signed and thereafter served upon the employee.

This formal document should include the following:

- The nature of the charges.
- A copy of the investigative file or investigative report.
- Notification that the employee may respond to the charges and a statement of the time frame for such response. This time frame must be reasonable and within the time periods established by law, ordinance, civil service rule, or collective bargaining agreement.

Response of Employee. An employee who desires an opportunity to be heard regarding the proposed charges may request a hearing.¹² This request should be made either verbally or in writing to the chief executive or their designee within the time stated in the formal document. The purpose of the hearing is to determine whether there are reasonable grounds to believe that agency charges against the employee are true and that suspension, dismissal, or other form of corrective action is merited.

The employee must be permitted enough time before the hearing to prepare to address the charges against them, and the hearing must be held at a time and location that is easily accessible to the employee.¹³

In the United States, once the pre-disciplinary hearing is concluded, if the chief executive officer feels that discipline is justified, the employee must have the right to a full evidentiary hearing in order to satisfy the Due Process Clause.¹⁴ Even where just cause for discipline exists, failure to observe the proper procedures as dictated by law may result in judicial invalidation of the agency's action and an award of civil damages to the employee.

Disposition. Following the hearing or written response of the employee, the appropriate disposition of the charge(s) should be determined. The disposition should normally be returned from the chief executive to the commander of the employee's unit, although this will depend upon the size and organization of the law enforcement agency. The subject employee must be provided with written documentation and explanation of the final disposition. The commanding employee must verify to the supervisor, OPS, and to the agency's central personnel authority that the authorized disciplinary action has been taken.

Time Limit on Review Process. Whenever possible, the investigation of a complaint should be completed within a reasonable period of time. A period of 45 days from the time of the initial receipt of the complaint to its disposition would be considered reasonable under most circumstances unless a waiver is granted by the chief executive or their designee. In addition, alternate time frames may be established by agency policy, law, or collective bargaining agreements. This time limit may be impractical in investigations involving criminal activity where the administrative investigation is suspended to allow the criminal investigation to begin or to proceed.

Appeal. In addition to the foregoing opportunities for an employee to defend against charges of misconduct, employees may appeal proposed charges and any action taken as provided by statute, ordinance, collective bargaining agreement, civil service regulations, or agency or jurisdictional appeal procedures.

¹² Due process requires that the officer be given notice of and an opportunity to be heard on the charges. See *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 546 (1985).

¹³ *Goldberg v. Kelly*, 397 U.S. 254 (1970).

¹⁴ *Id.*

Notification to Complainant. Following final disposition of the complaint, a letter must be sent from the chief executive or their designee to the complainant explaining the final disposition.

C. Importance of Documentation

It is essential to document allegations of misconduct, the resulting investigations, and any corrective action taken. While informal discipline should not be placed in an employee's permanent personnel file and might not have an immediate impact on employment status or condition, repeated behavioral problems or an accumulation of minor infractions of policy or procedure should be considered when assessing an employee's performance or determining future penalties for misconduct. Retention periods are often regulated by collective bargaining agreements, statutes, or civil service regulations.

When conducting any type of informal discipline or corrective action, supervisors should fully document the details of the circumstances of the incident(s) on which the counseling or reprimand is based. The specifics of the counseling or reprimand should also be documented together with such information as the date it took place, persons present, name of the person conducting the counseling, and any statements made by the subject employee that have bearing on the employee's performance or behavior. The employee should be notified that the documentation will be used only for purposes of recording the incident unless misconduct or inappropriate behavior is repeated.

The employee should be given the opportunity to read and discuss the contents of the documentation once completed, asked to sign and date it to verify that the employee has read it, and given a copy if the employee requests one. Where differences of opinion concerning the contents of the documentation exist, they should be discussed and outlined in an attachment. If the employee refuses to acknowledge the documentation by signature, this fact should be recorded in writing and witnessed by another supervisor.

The need for documentation is equally important in instances of formal disciplinary actions that have direct impact on the terms and conditions of employment. Compilation of employee disciplinary offenses and subsequent penalties may prove invaluable for comparative purposes in determining the consistency of disciplinary actions between individuals and, in larger agencies, between divisions, assignments, and varied agency components. In addition, summary and comparative data on the overall nature of employee misconduct in the agency can point to potential problems in policy, training, or supervision as well as identifying possible solutions. When systematically organized, individual employee conduct that may point to more serious problems can be flagged and addressed on a preemptive basis.¹⁵

D. Records and Confidentiality

To protect the confidentiality of the complainant, each complaint should be assigned a case or file number, that should be used as a reference during the investigation. OPS case files and other information are considered confidential and should be physically separated from other personnel records and remain under the secure control of OPS. Access to files should be limited to only those personnel with the appropriate credentials who have a need and right to access this information. These files should be retained for the period determined by the chief executive, applicable collective bargaining agreements, or as otherwise required by law. OPS files may not be released to any person or entity without prior approval of the chief executive or their designee unless release is otherwise authorized by law or court decision.

¹⁵ See the IACP Policy Center documents on Early Identification Systems available at <https://www.theiacp.org/resources/policy-center-resource/early-identification-system>

APPENDIX: GENERAL LEGAL CONSIDERATIONS – UNITED STATES

Certain aspects of law enforcement employee discipline may vary in accordance with applicable law, civil service decisions, or the terms of collective bargaining agreements. In addition, several U.S. states provide statutory regulation of the public complaint process. The most severe forms of discipline, such as suspension, reduction in pay, demotion, and termination, are those that are most extensively governed by law. The exact procedures for these forms of discipline will usually depend upon how the individual's employment is characterized under the applicable law. While the following discussion is based on U.S. case law, the principles found within may be useful for international readers in the development of agency policies and procedures.

Property Interest in Continued Employment. The 14th Amendment's Due Process Clause guarantees that no person shall be deprived "of life, liberty, or property without due process of law." The concept of "property" has been expanded beyond its common meaning to include the abstract concept of a vested interest or right to continue holding one's job. Where such a property interest in continued employment exists, termination, reduction in pay, demotion, or suspension from such employment must conform to certain federally determined due process procedures.¹⁶ A property interest in employment may be created and the extent of it determined by court decision; federal, state, or local legislation; civil service decision; or personnel handbooks.¹⁷

In most jurisdictions, law enforcement officers are given a property interest in their employment by state statute. The wording of such legislation may differ widely from state to state. Many state statutes provide that officers shall retain their position unless dismissed for just cause. Other statutes contain a listing of behaviors that may subject an officer to dismissal or discipline.

Where an officer is considered to have a property right in employment, suspension, reduction in pay, demotion, or termination must be based upon "just cause." This means certain legally recognized grounds and a hearing by the law enforcement agency or other appropriate tribunal must precede such management decisions. There may be other grounds for discipline and other rights accorded to officers in a given jurisdiction. These include the following:

- **Incompetence.** Most states permit an officer to be disciplined up to termination for incompetence. The agency is not required to retain officers who are unable to perform their duties due to incompetence.¹⁸
- **Neglect, Nonfeasance, or Failure to Perform Official Duties.** Even where officers are competent, if they do not fulfill their responsibilities, they may be disciplined. Thus, many states include neglect of duty, nonfeasance, and/or failure to perform official duties as grounds for disciplinary action up to and including termination.
- **Conduct Unbecoming of an Officer (CUBO).** Conduct unbecoming an officer may cover a wide range of behaviors to include acts of moral turpitude by the officer, such as certain sexual activity or lying.¹⁹ This charge may also refer to acts that are considered damaging to the agency's reputation, the welfare of the agency, or the general public.²⁰
- **Violation of Agency Policy, Rules, or Procedures.** "Just cause" for discipline has also been found where the officer has violated agency policies, rules, or procedures. Officers have a duty to obey all properly promulgated legal policies and procedures of the agency. Charges of misconduct by the officer or malfeasance in office are usually premised on such policy violations.

¹⁶ *Goldberg v. Kelly*, 397 U.S. 254 (1970).

¹⁷ *Arnett v. Kennedy*, 416 U.S. 134 (1974).

¹⁸ This generally does not include physical inability to perform. The Americans with Disabilities Act (ADA) and state or local law may affect the agency's right to take action against an officer where physical inability is involved.

¹⁹ Some states limit "moral turpitude" to acts involving stealing or lying. Others view the concept more broadly and include such matters as sexual misconduct, drug use, and so on, in its definition.

²⁰ For additional discussion regarding CUBO, see the IACP Policy Center documents on Standards of Conduct available at <https://www.theiacp.org/resources/policy-center-resource/standards-of-conduct>.

- *Failure to Obey an Order.* Dismissal may in some cases be founded upon failure to obey the lawful order of a superior officer. What constitutes a lawful order can be disputed in some cases. If the officer can show that there was in fact no direct order, or that the order given was unlawful, there are no grounds for discipline.

Violation of Criminal Law. In most states, an officer may be disciplined administratively in degrees up to and including dismissal for violating criminal law. Officers may be disciplined, up to including termination, for violation of agency policy related to criminal conduct whether or not they are convicted of criminal charges. The administrative proceeding conducted by the law enforcement agency does not have to be guided by the legal standard of proof “beyond a reasonable doubt” as does a criminal court proceeding. A fair preponderance of the evidence indicating guilt is all that is necessary for an agency to take disciplinary action up to and including dismissal from service.

Agencies may choose not to file formal administrative charges until there has been an ultimate resolution of the criminal charges. However, criminal court proceedings often take extensive time for resolution, particularly where appeals are granted. If criminal charges are filed against an officer, the law enforcement agency should not return the officer to street duties and may elect to transfer them either to an administrative assignment or to administrative leave status. If the officer is maintained on any type of duty and/or retains law enforcement powers, the agency risks civil litigation should the officer subsequently use those powers inappropriately, whether on or off duty.

If the officer is placed on administrative leave, it should be with pay, unless another mechanism is in place through state or local law, collective bargaining agreement, or other mutually recognized procedure that permits unpaid suspension when the allegations are extreme or egregious. These actions ensure the employment status of the officer, and the officer is required to answer questions regarding the investigation or face dismissal for failure to comply with a legal order. However, considering that an officer can remain on administrative leave with pay for years pending the outcome of criminal charges, the financial efficacy of this approach often comes into question. Agencies should also consider whether this action has negative effects on other officers in the agency. As a result, the time officers may remain on administrative duty with pay should be as short as possible.

In some cases, where the evidence is sufficiently strong to determine that an officer has committed a crime, it may be best to dismiss the officer even if in doing so the agency has to grant use immunity to the officer barring the officer’s statement from being used for criminal prosecution. “Use immunity” means that the agency will not use any admissions of criminal activity by the officer for criminal prosecution purposes. Such decisions depend on numerous factors to include the seriousness of the offense and the strength of the case against the officer, among other matters.

Disciplinary Hearings. Law enforcement officers holding a property interest in their positions normally must be given an administrative hearing prior to suspension, reduction in pay, demotion, or dismissal.²¹ However, the agency may be permitted to suspend the officer with or without pay pending the administrative hearing, including in situations where the officer would pose a significant hazard to the public or the agency if allowed to remain on active duty while awaiting a hearing.²² In some rare instances it may be feasible to relieve an officer from active duty without pay with the provision that if the administrative hearing results in a favorable ruling for the officer, the officer will be reinstated with appropriate back pay and without a break in benefits.

Terminable-at-will Employment.²³ Some states do not confer a property interest upon law enforcement officers and essentially treat public and private sector officers in a similar manner. Termination of officers is considered to be at the will of the employing agency. Employment at will means that discharge can be imposed without clearly articulated cause. However, no at-will employed officer can be discharged based upon race, religion, sex, national origin, sexual orientation, or other protected classes or categories.

²¹ *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985).

²² *Loudermill*, 470 U.S. at 544-5.

²³ The rights accorded a law enforcement officer in terminable-at-will states vary significantly from state to state. Adoption of exceptions by statute or case law should be researched within individual state laws.

In general, the federal due process pre-disciplinary requirements discussed in the previous section do not apply to terminable-at-will officers. As the officer has no legal property interest in the position, there is no deprivation of property upon its termination that is protected by the 14th Amendment. As a result, a terminable-at-will officer has no right to a pre-disciplinary hearing to determine the validity of the firing decision except in certain limited instances.²⁴

Probationary Officers. Probationary officers of public agencies can be dismissed without a hearing and without judicially cognizable good cause.²⁵ However, a general exception to this rule is recognized whenever an officer's liberty interest, as secured by the Due Process Clause of the 14th Amendment is invoked.

Right to Good Reputation and "Clean Name." Any officer whose discharge impacts the officer's liberty interests as provided by the 14th Amendment has a right to a name-clearing hearing. Impairment of a liberty interest occurs when a stigma or other disability results from termination of employment, such as an inability to secure new employment.²⁶

Where an officer is to be discharged on the basis of a charge that may damage the officer's standing in the community or attach a stigma to the officer's good name, reputation, honor, and integrity, a name-clearing hearing prior to termination is necessary.²⁷ Essentially, employers are not allowed to ruin an officer's chances of getting another job by firing an officer on the basis of scandalous or grievous charges that may be false, without giving the officer an opportunity to prove that the charges are false. For example, discharge of an officer for a positive drug test would trigger the requirement that the officer be given the opportunity to have a name-clearing hearing.

Defamation and Other Interests in Reputation. Even where termination itself is lawful, agencies must be cautious of any statements released to the media or to prospective employers regarding the cause for the dismissal.²⁸ Regardless of whether there is a property interest in the employment and whether correct procedures were followed in the disciplinary process, incorrect or incautious statements about a former officer may provide that officer with a right to bring a civil action in state court for defamation or in federal court for violation of the officer's "liberty interest" in his or her reputation.

"Whistle-Blowing" Statutes. An important protection afforded to all officers is found in the so-called whistle-blowing statutes. These statutes prohibit employers from discharging officers who report or threaten to report an employer's violations or intended violations of the law. All efforts should be made to prevent acts of retaliation for reporting allegations of misconduct involving other agency officers or government officers.²⁹

²⁴ *Bishop v. Wood*, 426 U.S. 341 (1976).

²⁵ *Perry v. Sindermann*, 408 U.S. 593 (1972).

²⁶ See for example, *Lubey v. City and County of San Francisco*, 98 C.A. 3rd, 340 (1979).

²⁷ *Board of Regents v. Roth*, 408 U.S. 564, 573 (1972). This is generally not required for an at-will or probationary employee.

²⁸ Legislation may protect the agency from liability for statements made to prospective employers about the ex-officer's performance or the cause of the ex-officer's dismissal. To ensure the lawfulness of releasing this information, agencies should seek a written release signed by the former officer.

²⁹ See the IACP Policy Center documents on Retaliatory Conduct by Employees available at <https://www.theiacp.org/resources/policy-center-resource/retaliatory-conduct>.

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Need to Know...

Updated: April 2019

Investigation of Allegations of Employee Misconduct

Law enforcement agencies should establish policies and procedures for fully, fairly, and impartially investigating complaints and allegations of employee misconduct. Transparency of these procedures will aid in fostering trust with the community and acceptance of the process by agency employees.

- Agencies should develop **individualized complaint forms** that allow members of the public to report alleged employee misconduct. Agencies should also identify methods for internal reports of misconduct.
- Complainants should be provided with the opportunity to submit complaints **in person, over the telephone, in writing, or via the Internet**.
- A **central authority** with primary responsibility for conducting investigations of employee misconduct allegations should be identified. This may include the Office of Professional Standards (OPS) or Internal Affairs Unit.
- **Supervisors** should be given the opportunity to conduct preliminary assessments of complaints to determine if grounds exist to conduct an administrative investigation. However, OPS should maintain the authority to assume responsibility of the investigation at any time.
- Employees accused of misconduct should be **interviewed** as part of the investigation. All applicable warnings regarding compelled statements should be provided to the employee and the employee should be allowed a personal or professional representative to be present as an observer.
- **Examinations and searches** may be necessary as part of the investigation. This may include breath, urine, or polygraph examinations; lineups; and/or searches of property belonging to the agency. Agencies should consult their legal advisors regarding applicable restrictions.
- Once the investigation is complete, a final **disposition** (sustained, not sustained, exonerated, unfounded, or policy failure) should be determined by the supervisor or OPS, as appropriate, and forwarded to the agency chief executive for review and approval.
- If the investigation results in a disposition of **sustained**, a formal document outlining the administrative charges should be drafted and provided to the employee. The employee should be provided with an opportunity to respond and/or appeal.
- Where necessary, all **corrective actions** should be approved by the chief executive or their designee and fully documented.
- All information related to the investigation of allegations of misconduct should be considered **confidential** and retained under secure conditions.
- Once the investigation is complete, a letter should be sent to the **complainant** explaining the final disposition.



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