

Internal Affairs/Citizen Complaints	Related Policies:
<i>This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.</i>	
Applicable Vermont Statutes: Sec. 1. 20 V.S.A. chapter 151 d.§ 2362a	
CALEA Standard: 52.1.1, 52.1.2, 52.1.3, 52.1.4, 52.1.5, 52.2.6	
Date Implemented:	Review Date:

- I. **Purpose:** It is imperative that the Police Department operates in a degree of transparency and is responsive to complaints alleging employee misconduct and external concerns regarding the operation of the agency. Members of the public should be provided with a reasonable avenue for any redress of grievances they may have with the service received by agency employees or the conduct of the Police Department. This policy provides members of the agency with the procedures for the acceptance of complaints, the initiation of the administrative investigative process, the process for conducting a fair and reasonable investigation, the proper methods for adjudication of these administrative investigations, and the methods for the administration of fair, reasonable and defensible discipline. It is not required that every agency have a designated person or unit expressly for Internal Affairs/Office of Professional Standards, but every agency must have someone who becomes the most knowledgeable person regarding these practices.
- II. **Policy:** The Police Department will accept and document all complaints alleging employee or agency misconduct. **This department shall conduct a valid investigation of any complaint alleging that a law enforcement officer employed by the agency committed Category A or Category B conduct. This agency shall conclude its investigation even if the officer resigns from the agency during the course of the investigation.** These investigations shall be conducted for the following principle reasons:
 - A. To ensure that complaints alleging employee or agency misconduct are accepted and investigated in a consistent and reasonable manner to uncover the truth of the allegations,
 - B. To identify areas of misunderstanding by the complaining citizen,
 - C. To identify employees whose attitude, behavior and/or performance is in need of correction and supervisory intervention,
 - D. To protect agency employees and the Department from erroneous complaints, and

E. To identify Department policies, training and/or practices in need of reevaluation, clarification and/or correction.

III. Definitions:

A. Complaint of employee misconduct: A complaint is an allegation from any source of an act or omission by an agency employee, which, if proven true, would be considered misconduct or a violation of agency policies, rules or regulations.

B. Note: Complaints regarding the validity of traffic citations or parking tickets are not considered complaints for this definition and the party should be referred to the proper court for resolution.

C. Complaint of agency dissatisfaction: A complaint from an external source of dissatisfaction with an agency policy or practice.

D. Public concerns regarding law enforcement operations not amounting to a complaint: A concern expressed by a member of the public which does not meet the agency's definition of a complaint, but must be documented by the agency employee receiving the information from the member of the public.

E. Public Service Report: A report available to the public which allows them to file either a compliment on, or a complaint against, an officer.

F. Council means: Vermont Criminal Justice Training Council.

G. "Category A conduct" means:

a. A felony

b. A misdemeanor that is committed while on duty and did not involve the legitimate performance of duty.

c. Any of the following misdemeanors, if committed off duty:

i. simple assault, second offense;

ii. domestic assault;

iii. false reports and statements;

iv. driving under the influence, second offense;

v. violation of a relief from abuse order or of a condition of release;

vi. stalking;

vii. false pretenses;

viii. voyeurism;

ix. prostitution or soliciting prostitution;

x. distribution of a regulated substance;

xi. simple assault on a law enforcement officer; or

xii. possession of a regulated substance, second offense.

H. "Category B conduct" means: gross professional misconduct amounting to actions on duty or under color of authority, or both, that involve willful failure to comply with a State-required policy or substantial deviation from professional conduct as defined by

the law enforcement agency's policy or if not defined by the agency's policy, then as defined by Council policy, such as:

- a. sexual harassment involving physical contact or misuse of position;
 - b. misuse of official position for personal or economic gain;
 - c. excessive use of force under color of authority, second offense;
 - d. biased enforcement; or
 - e. use of electronic criminal records database for personal, political, or economic gain.
- I. "Category C conduct" means any allegation of misconduct pertaining to Council processes or operations, including:
- a. intentionally exceeding the scope of practice for an officer's certification level;
 - b. knowingly making material false statements or reports to the Council;
 - c. falsification of Council documents;
 - d. intentional interference with Council investigations, including intimidation of witnesses or misrepresentations of material facts;
 - e. material false statements about certification status to a law enforcement agency;
 - f. knowing employment of an individual in a position or for duties for which the individual lacks proper certification;
 - g. intentional failure to conduct a valid investigation or file a report as required by this subchapter; or
 - h. failure to complete annual in-service training requirements.

IV. Procedure:

- A. Sources for complaints: A complaint can originate from any of the following sources:
- a. Individual aggrieved person
 - b. Third party
 - c. Anonymous
 - d. Agency employee
 - e. News media
 - f. Governmental agency
 - g. Complaints can be made by members of the public:
 - a. In person
 - b. By telephone
 - c. By letter
 - d. Email
- B. Informational public brochure: The agency has developed an informational public brochure to inform members of the community how to provide the Department with

commendations, agency suggestions, dissatisfaction with the agency, or a complaint alleging employee misconduct. (see attachment) These brochures will be maintained in all police station lobbies, police informational desks, and shift supervisor desks.

- C. This department shall refer to the Council any unprofessional conduct complaints made against the Police Chief of this Department.**
- D. Police employee responsibilities:** Whenever a police employee becomes aware of a citizen's complaint meeting the above complaint definition or becomes aware of misconduct of another agency employee, s/he shall:
- a. Immediately notify a supervisor or the acting officer in charge and ensure that follow-up to the complaining person will not be delayed.
 - b. If a supervisor cannot be made available or the party making the complaint refuses to wait for the supervisor, the employee will gather all available information regarding the complaint and contact numbers
 - c. The employee shall ensure that this information is given to a supervisor at the earliest moment during the employee's duty shift
 - a. Failure to follow these acceptance provisions will result in disciplinary action against the involved employee
- E. Supervisor's responsibilities:** Whenever a supervisor becomes aware of a person requesting to make a complaint or an incident which will likely result in a complaint or administrative investigation, the supervisor shall conduct an immediate preliminary investigation including:
- a. Conduct a recorded interview with the complaining person attempting to ascertain each and every allegation of misconduct alleged. The complaining person can refuse to be recorded. In these cases, the supervisor shall continue to interview the complainant and note the refusal on the completed Public Service Report. Should the allegations not amount to a complaint consistent with the agency definition of a complaint, the supervisor will advise the party that his/her dissatisfaction will be recorded and forwarded for agency review.
 - b. The supervisor accepting the complaint, or if the incident is an occurrence likely to result in a complaint or administrative investigation and no specific complaining person is present, the supervisor shall respond to the scene of the police encounter/incident and:
 - a. Determine the identity of persons involved, witnesses, and other agency personnel who were present;
 - b. Ensure that proper evidence is collected and/or documented;
 - c. Ensure that all reasonable documentation and physical evidence is maintained. This includes police reports, communications/dispatch information, mobile data terminal transmissions, medical documentation, and video recording of any portion of the police involvement;
 - d. Ensure that all necessary medical treatment is provided and documentation is preserved;
 - e. Prepare the Public Service Report and obtain an agency document number; and

- f. Notify all persons consistent with the specifics of the incident.
- F.** The complaint initiation process is not incumbent on cooperation of the complaining person. In the event that the complaining person refuses to cooperate with the investigation or there is no identifiable complainant and the information known to the supervisor satisfies the agency's definition of a complaint, the complainant will be listed as Agency.
- G.** Classification of complaints: Complaints and administrative investigations will be classified by the agency and assigned specific numbering (employee misconduct, internal, risk management, traffic accident, critical incident and non-complaint). The agency will maintain specific investigative and reporting protocols for each classification of complaint.
- H.** Processing the complaint: It is the responsibility of the IA/OPS unit/person to process the complaint for investigation.
- a. Assign the complaint the appropriate control number,
 - b. Log the complaint into the record management system,
 - c. Ensure that the complainant receives a letter notifying that the complaint has been received and will be assigned for investigation ,
 - d. Assign the investigation to the appropriate agency employee for investigation , and
 - e. Assign the investigation a due date for completion within 30 days. Extensions of this due date must be submitted in writing for approval by the person in charge of the IA/OPS process and made part of the final investigative report.
- I.** Investigative procedures:
- a. The employee assigned to conduct the administrative investigation shall:
 - a. Evaluate the allegations contained in the Public Service Report, listen to the tape recording of the complainant, if available, and consult with the person accepting the complaint or learning of the allegation(s),
 - b. Obtain all police reports, communications/dispatch records, MDT transmissions, video recordings, and other police documents,
 - c. Determine the specific allegations of the complainant and identify any other possible agency violations, whether alleged by the complainant or not, and
 - d. Conduct interviews normally in the following sequence:
 - (a) Complaining person
 - (b) Other public witnesses
 - (c) Agency witnesses
 - (d) Accused employees; officers shall be given written notice of intended interview regarding allegations and, normally be allowed a reasonable period of time prior to the actual interview.
 - b. The agency shall not release the photograph of an officer who is the subject of an investigation without the written permission of the officer.

- c. The agency may display an officer's photograph to a prospective witness as part of an investigation and may release an officer's photograph to an investigating individual for the same purpose.

J. Officer Rights:

- a. At the conclusion of the investigation the officer shall be given notice and a copy of any written accusations against him or her;
- b. The officer shall have the right to an attorney or representative retained by the police officer present with him or her at all hearings or proceedings regarding the written accusation; (Weingarten Rule)
- c. Officer's rights guaranteed by Federal Constitutional Standards and Vermont Law shall be respected. (i.e. Miranda/Garrity)
- d. The officer shall have the right to be heard and present evidence at any hearing or proceeding on the written accusation. The officer's attorney or representative may make this presentation.
- e. The officer or the person making the accusation has the right to record any proceeding or hearing on the accusation.
- f. The officer shall have the right to appeal any decision reached by the hearing in accordance with the City/Town ordinance.
- g. Officers shall not be required to produce or disclose personal financial records except pursuant to a valid search warrant or subpoena.
- h. Collective Bargaining provisions relating to internal investigations and discipline shall be adhered to during any administrative investigation.

J. Disposition:

- a. The investigating person will prepare the investigative report and submit it through the chain of command for adjudication and disposition. The investigator is a fact finder only and is not expected to make findings or recommendations.
- b. The adjudication person will make a recommendation for the disposition findings for each allegation using the following classifications using the burden of proof of a preponderance of the evidence:
 - a. Sustained: there was a preponderance of evidence to prove the allegation
 - b. Not Sustained: there was not sufficient evidence to either prove or disprove the allegation
 - c. Exonerated: the actions of the employee were consistent with the law and agency policies, rules, regulations and practice
 - d. Unfounded: the allegation did not occur
 - e. Policy and/or training deficiency: the allegation occurred but was the fault of deficiencies in agency policy and/or training and cannot be accountable to the employee involved

These disposition recommendations shall be forwarded through IA/OPS or the designated person for review and concurrence. The final authority for the disposition is the Chief of Police or his/her designee. Both IA/OPS and the

Chief of Police are responsible to ensure that the investigation and the final recommendation are consistent with the investigation and the practice of the agency.

When allegations are sustained, the specific charges and processing will be conducted according to the personnel practices of the agency.

K. Role of IA/OPS or the designated person

- a. IA/OPS shall prepare the letter to the complainant following the conclusion of the investigation and the disposition of the complaint advising the person that the matter has been resolved.
- b. IA/OPS is responsible for the quality control of the complaint and administrative investigation process and shall:
 - a. Review all final complaint investigations to ensure that they are consistent with the practices of the Department/Office;
 - b. Maintain records of the process;
 - c. Maintain the completed investigative and adjudication files in a secure, confidential manner;
 - d. Conduct an annual audit of the process;
 - e. Maintain statistical documentation regarding the process and prepare any overall reports consistent with the directions of the Chief of Police; and
 - f. Alert the Department to any noticeable trends requiring that may require specific supervisory direction, policy review or training evaluation.

L. When criminal allegations involving a member of the agency are identified the Chief of Police and internal affairs shall be notified immediately:

- a. Crime within agency jurisdiction: the appropriate criminal investigation unit will investigate the criminal aspect unless the agency elects to have the investigation conducted by an outside entity. The administrative investigation will be conducted by internal affairs and is not dependent on the conclusion of the criminal investigation. Normally the initiation of a personnel complaint and the start of the administrative investigation will proceed concurrently with the criminal investigation.
- b. Crime outside agency jurisdiction: Internal Affairs will:
 - a. Develop and maintain liaison with the involved agency, and
 - b. Conduct the administrative investigation the same as it would have had the incident occurred within this agency's jurisdiction.
- c. **Duty to Report to the Council: The Chief of Police or the Chairman of the agency's civilian review board shall report to the Council within 10 business days if any of the following occur in regard to a law enforcement officer of this agency:**
 - a. **Category A.**
 - 1. **There is a finding of probable cause by a court that the officer committed Category A conduct.**

2. There is any decision or findings of fact or verdict regarding allegations that the officer committed Category A conduct, including a judicial decision and any appeal therefrom.
- b. Category B.**
 1. The agency receives a complaint against the officer that, if deemed credible by the chief of police as a result of a valid investigation, alleges that the officer committed Category B conduct.
 2. The agency receives or issues any of the following:
 - a) a report or findings of a valid investigation finding that the officer committed Category B conduct; or
 - b) any decision or findings, including findings of fact or verdict, regarding allegations that the officer committed Category B conduct, including a hearing officer decision, arbitration, administrative decision, or judicial decision, and any appeal therefrom.
 - c. Termination.** The agency terminates the officer for Category A or Category B conduct.
 - d. Resignation.** The officer resigns from the agency while under investigation for unprofessional conduct.
 - e.** As part of his or her report, the chief of police or the chair of the civilian review board shall provide to the Council a copy of any relevant documents associated with the report, including any findings, decision, and the agency's investigative report.
 - f.** The Executive Director of the Council shall report to the Attorney General and the State's Attorney of jurisdiction any allegations that an officer committed Category A conduct.