

<p style="text-align: center;"><b>OSSIPEE POLICE DEPARTMENT</b></p> <p style="text-align: center;"><b>Policies and Procedures Manual</b></p>	
<p style="text-align: center;"><b>Policy: Internal Affairs</b></p>	<p style="text-align: center;"><b><u>Chapter 14:</u></b> <b>Internal Affairs</b></p>
<p>Issued: 01-01-2020  Effective:07-15-2021  Amended: 08-01-2023  New Hampshire LE Accreditation Commission Standard: 3.1.4, 3.1.5,3.2.1, 3.2.2, 3.2.3, 3.2.4</p>	<p style="text-align: center;">Issuing Authority   <i>Donald F. Babbin Jr.</i>  Donald F. Babbin, Jr.  Chief of Police</p>

**14.1.1 Internal Affairs and Misconduct Reporting**

**I. PURPOSE**

An effective policy for investigating complaints against employees 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 the public and employees of procedures for accepting, processing, and investigating complaints and allegations of misconduct. It is for the internal governance of the department and, as provided by RSA 516:36, is not intended and should not be interpreted to establish a higher standard of care in any civil or criminal action than would otherwise be applicable under existing law.

**II. POLICY**

It is the policy of the Ossipee Police Department to accept and, fairly and impartially, investigate all complaints and allegations to determine validity and impose any corrective actions that may be justified in a timely and consistent manner, and to meet statutory reporting requirements for allegations of misconduct by law enforcement officers as defined in New Hampshire RSA 105:19 and RSA 106-L.

**I. DEFINITIONS**

- A. **Complaint:** Any specific written or verbal allegation against an employee which, if true, would constitute a violation of law or regulation, law enforcement misconduct under RSA 106-L, and/or a violation of the policies or procedures of the Ossipee Police Department.
- B. **Complaint Investigation:** An allegation against an employee of the Ossipee Police Department that requires formal follow-up but is of such a nature that it can

be handled at a supervisory level without the initiation of an internal affairs investigation.

- C. **Internal Affairs Investigation:** A formal investigation to determine if an employee of the Ossipee Police Department violated department policy or committed misconduct as defined by New Hampshire law. The results of this investigation may result in corrective action, formal discipline, criminal referral, formal reporting to NH Police Standards & Training Council, and/or any combination of administrative action up to and including termination.
- D. **Internal Affairs Investigator:** The Chief of Police of the Ossipee Police Department shall decide who will be assigned to investigate or supervise the investigation. All complaints shall be reviewed by the Chief of Police. The investigator shall forward the findings of the investigation for review and recommendation according to the appropriate chain of command. Complaints against or involving the Chief of police, shall be referred by State or municipal officials for investigation to an appropriate outside agency.
- E. **Misconduct under RSA 105:19:** Law enforcement officers must report the observed enumerated crimes by another law enforcement officer: "assault, sexual assault, bribery, fraud, theft, tampering with evidence, tampering with a witness, use of a chokehold, or excessive and illegal use of force as defined by the New Hampshire criminal code.
- F. **Misconduct under RSA 106-L:** Law enforcement agencies must report receipt of all allegations that if sustained would constitute misconduct, defined as:
- "RSA 106-L:2, V. (a) An officer has been convicted of one or more the following:
- (1) A crime which constitutes a felony in this or any other state;
  - (2) A misdemeanor for which there was a sentence of incarceration, regardless of whether all or part of the sentence was suspended;
  - (3) Driving while intoxicated in this or any other state;
  - (3) A crime of moral turpitude. 'Moral turpitude' means an illegal act involving dishonesty, deceit, theft, or willful misrepresentation, or a crime which tends to bring discredit on the police or corrections service. A crime of moral turpitude shall include those crimes listed in POL 402.02(a)(4);
- or (b) A sustained finding that the officer has engaged in conduct negatively reflecting on the officer's trustworthiness or credibility, including but not limited to:
- (1) A deliberate and material lie during a civil, administrative, or criminal proceeding, in a police report, an internal investigation, or an investigation conducted by the New Hampshire police standards and training council;

(2) A falsification of records or evidence in an investigation or official proceeding; or

(3) A misrepresentation or tampering with official records or reports, tampering with witnesses or falsifying evidence; or

(c) A sustained finding that during the course of the officer's official duties, the officer engaged in discriminatory conduct on the basis of age, sex, sexual orientation, gender identity, race, religious creed, color, marital status, familial status, physical or mental disability, or national origin prohibited by RSA 354-A; or

(d) A sustained finding that the officer engaged in conduct, whether on or off duty, that would adversely reflect on their fitness to perform law enforcement or corrections duties to include engaging in racist conduct or making racist statements; or

(e) A sustained finding that the officer engaged in acts or omissions of conduct which would cause a reasonable person to have doubts about the individual's honesty, fairness, and respect for the rights of others and for the laws of the state or nation; or

(f) A sustained finding that the officer knowingly committed an egregious dereliction of duty resulting in a preventable fatality or serious bodily injury or resulting in the deprivation of constitutional rights or leads to the failure of someone to be prosecuted for a felony; or

(g) A sustained finding that during the course of the officer's official duties, the officer engaged in the use of excessive and illegal force.

## **II. CONFIDENTIALITY OF INVESTIGATIONS**

Internal affairs investigations are conducted for the internal use of the Ossipee Police Department and are to be kept confidential in accordance with law. The Ossipee Police Department reserves the right to provide information regarding investigations to obtain legal counsel and comply with reporting requirements including but not limited to: prosecutorial disclosure, notification to the New Hampshire Attorney General's Office Public Integrity Unit, and reporting to Police Standards & Training. Public comment on administrative investigations shall be limited and all inquiry referred to the Chief of Police when and if appropriate and in accordance with law. Internal investigation files shall be securely maintained and kept separately from employee personnel files.

## **III. RECEIVING AND PROCESSING COMPLAINTS**

**A.** Complaints may be received in person, in writing, or by any other means without regard to the source. Complaint forms shall be made available through Ossipee Police personnel, and at the Ossipee Police Station. Complaints may be received for off-duty conduct if such conduct affects the employee's fitness or ability to perform their law enforcement duties or reflects discredit on the agency.

**B.** Employees shall assist individuals who express the desire to lodge a complaint against any employee of the Ossipee Police Department. This may include but is not limited to:

1. Explaining the agency's complaint procedures;
2. Providing referrals to individuals and/or locations where such complaints can be made in person or through alternate means;
3. Calling a supervisor to the scene to document the complaint; and/or
4. Providing a copy of the complaint.

**C.** The complainant shall be asked to verify by signature that the complaint is a complete and accurate account. If the complainant elects not to sign, this fact shall be documented with the complaint and the investigative process shall proceed.

- A. All newly promoted supervisors shall receive training on how to document and investigate citizen complaints.

## **VI. INTERNAL AFFAIRS INVESTIGATIONS**

- A.** The Chief of Police shall be notified of the receipt of all lower-level complaints within two (2) calendar days or as soon as practical. The Chief of Police shall be notified immediately upon receipt of a complaint of criminal activity, including excessive force, or any action that could bring substantial discredit to the agency.
- B.** Any supervisor who receives a complaint shall provide the complaint form and/or any attached documentation to the Chief of Police either by hand or in a sealed envelope. The Chief of Police or appropriate superior shall review the documentation and determine the appropriate follow-up.
- C.** The Chief of Police may choose to suspend or relieve from duty any employee being investigated for acts or allegations that, if true, would affect their ability to perform their duties as required. The employee's supervisor will be notified immediately anytime an employee is temporarily suspended or relieved from duty. Employees may be suspended or relieved from duty by the Chief of Police with or without pay at any point during an internal investigation.

- D** The Chief of Police shall notify Police Standards & Training in writing of the arrest or charging of a law enforcement officer through Benchmark “Form G – Arrest of Officer” within 15 days. This must be filed upon arrest or charging of any law enforcement officer by that agency, or upon arrest or charging of any law enforcement member of that agency by another agency. A law enforcement officer whose certification has been suspended pursuant to RSA 106-L:5, XXIV is prohibited from serving in a law enforcement capacity and must be immediately placed on administrative leave or reassigned to a civilian capacity by the Chief of Police.
- E.** Any complaint that involves an allegation of on-duty criminal conduct or misconduct under RSA 105:19 shall be immediately reported to the New Hampshire Attorney General’s Office, Public Integrity Unit, as well as to Police Standards & Training via the appropriate Benchmark form. Any complaint that alleges other off-duty criminal conduct by a law enforcement officer shall be referred to the agency holding jurisdiction or, in the case of conflict by the employee agency, to the sheriff or another appropriate law enforcement agency and the county attorney’s office. The internal investigation shall be stayed while the criminal investigation is pending unless the investigating jurisdiction and agency mutually agree that the internal investigation would not interfere with any criminal investigation.
- F.** Any complaint that involves an allegation of misconduct under RSA 106-L shall also be reported within fifteen (15) days to Police Standards & Training via the appropriate Benchmark form.
- G.** An employee against whom a complaint has been made shall be advised of their rights and responsibilities and provided a written statement of the allegations in a timely manner unless it is determined by the Chief of Police that disclosure might jeopardize an investigation. The notice shall include the name of the complainant, the nature of the allegations, and copies of the employee's responsibilities and rights under State and municipal law and regulations, departmental rules and procedures, and applicable collective bargaining agreements. If the employee was not initially notified, the employee must receive written notification prior to any interview or proceeding.
- H.** Any investigation must be commenced immediately upon receipt of the complaint and must be completed within 30 (thirty) days. If extenuating circumstances preclude completion within 30 days, the investigating supervisor shall request an extension from the Chief of Police in writing, and provide written notification to the complainant and employee, if previously notified.

- I. The internal affairs investigator shall be responsible for providing the Chief of Police or appropriate supervisor with status reports on the progress of the investigation every seven (7) days. These reports shall contain all pertinent information relating to the progress of the investigation and may be verbal or in writing.
- J. An employee under investigation or the employee's representative may contact the internal affairs investigator to ascertain the status of the investigation.

#### **IV. INVESTIGATIVE METHODS**

- A. Interviews of identified witnesses, both civilians and employees, shall be conducted in a timely manner and to obtain detailed statements. If assented-to by the witness, all interviews shall be recorded and a copy of the recording shall be maintained within the internal affairs investigative file.
- B. Every attempt will be made to schedule employee interviews during the employee's normal work hours unless the seriousness of the investigation is such that an immediate interview is required. Employees may request to have a union representative present and available for consultation during any internal affairs interview. That representative is not entitled to interfere with the conduct of the interview. An employee shall be entitled to submit a statement in writing in addition to the interview. The internal affairs investigator may request that an employee submit a written statement in lieu of or in addition to the employee's interview.
- C. Prior to conducting an interview of an employee under investigation, the Chief of Police and internal affairs investigator shall decide whether such interview shall be compelled under Garrity or if the employee will be provided with Miranda rights prior to the interview if criminal conduct is alleged. Employees under investigation shall not be threatened with transfer, dismissal, or disciplinary action during an interview. No promise or reward shall be made by the internal affairs investigator as an inducement to answer questions. The interview shall be limited to questions which are specifically, directly, and narrowly related to the investigation.
- D. An employee may be required to provide certain information or submit to testing or examination during an internal investigation. Such procedures shall be conducted only with the express authorization of the Chief of Police or appropriate supervisor and be specifically, directly, and narrowly related to the investigation. These may include but are not limited to: drug testing; photographing; participation in an identification line-up; submitting to medical, psychiatric, or other laboratory examination and with appropriate release forms or by subpoena or warrant; providing personal papers, electronics, or financial disclosures; and providing access to personal communication devices and social

media accounts including passwords and log-in information. All information gathering, testing, and examinations shall be collected consistent with the rules of evidence if they are to be used in a criminal investigation.

- E. An employee's assigned department vehicle, office, locker, desk, department issued phone, and/or computer are department property supplied for work-related purposes. No grant of property right or privacy is expressed or implied and each may be subject to search/inspection at any time and without notice by authorized personnel upon authorization by the Chief of Police or appropriate supervisor.
- G. If an employee refuses to participate in an interview or submit to testing, examination, or other requirements of this section, the Chief of Police or appropriate supervisor may order the employee to comply in writing. If the employee refuses to comply, formal punitive disciplinary actions including dismissal may be administered.

## V. CONCLUSION OF THE INVESTIGATION

- A. At the conclusion of an internal investigation, the investigator shall make a recommended finding for each allegation against each employee. The recommendation shall include a brief summary of the evidence supporting the finding and any mitigating circumstances. The findings may include:
  - 1. **Unfounded:** incident did not occur/allegation is false or not factual;
  - 2. **Exonerated:** incident occurred but officer's actions are justified, lawful, and in accordance with policies and procedures;
  - 3. **Not sustained:** facts presented are insufficient to clearly prove or disprove the allegation;
  - 4. **Sustained:** allegation is supported by clear and convincing evidence that the officer committed misconduct or violated a law, rule, policy, or procedure; or
  - 5. **Policy failure:** alleged acts did occur but the officer was acting in accordance with department policy which was deemed inadequate.
- B. The appropriate supervisor shall review the investigation and submit a summary of the facts including any noted violations of law, regulation, and/or departmental or municipal policy or procedure. The summary may also include recommendations to improve procedures and identify departmental deficiencies, provide training, and enhance future performance.
- C. An employee under investigation shall be afforded all due process rights and given

the opportunity to explain their actions to the internal affairs investigator or Chief of Police prior to a decision on disciplinary or corrective action.

**D.** Pursuant to RSA 106-L:21, I, the agency must complete the internal “investigation even if the [subject] officer resigns from the agency during the course of the investigation.” The investigation may subsequently lack direct information from the former employee but must be completed to the greatest extent possible and a recommendation made based on the information available.

**E.** The Chief of Police shall issue the decision as to any disciplinary and/or corrective action to be imposed. Disciplinary or corrective action may include but is not limited to:

- 1. Memorandum of counsel;**
- 2. Written warning;**
- 3. Suspension without pay;**
- 4. Demotion;**
- 5. Termination; or**
- 6. Further conditions including but not limited to re-training, specialized instruction, and additional supervision**

**F.** In the case that the Chief of Police is the subject of the investigation, the appropriate hiring authority shall issue the decision as to any disciplinary and/or corrective action to be imposed.

**G.** The complainant shall be notified promptly as to the result of the investigation.

**H.** The employee shall be advised of and afforded any subsequent procedures or rights of appeal in accordance with law and departmental and municipal policies and collective bargaining agreements.

## **IX. STATUTORY REPORTING REQUIREMENTS**

**A.** The Chief of Police must report to Police Standards & Training through the appropriate Benchmark form (“Report of Misconduct under RSA 105:19”) within seven (7) days of receipt of notification of a report of misconduct by a law enforcement officer under RSA 105:19 for the observed enumerated crimes witnessed by another law enforcement officer. The reporting officer shall report directly to Police Standards & Training through the appropriate Benchmark form in the event that the Chief of Police is the perpetrator of the misconduct.

**B** The Chief of Police must report to the Conduct Review Committee through the appropriate Benchmark form (“Allegation of Misconduct under RSA 106-L”) within fifteen (15) days of receipt of an allegation that would constitute misconduct if sustained under RSA 106-L. Pursuant to RSA 106-L:20, I(a), the initial report must also include:

- “(1) That the agency is conducting, or has conducted a valid internal investigation of the allegation as defined in this chapter and in accord with their internal affairs policy;
- (2) That the agency has an outside law enforcement agency conducting or has conducted a valid internal investigation into the matter as defined in this chapter; or
- (3) That the agency is requesting a valid internal investigation be conducted into the matter by investigators designated by the director or the committee.”
- C.** Upon completion of the internal investigation of an allegation of misconduct, the Chief of Police shall provide to the Conduct Review Committee the results of the investigation including “a copy of any [and] all relevant documents associated with the valid investigation, including the agency’s investigative report, and any findings and decisions. Such documents shall not be subject to RSA 91-A, except as provided by [Chapter 106-L].” RSA 106-L:20, II.
- D.** The Conduct Review Committee “may receive or solicit additional information from the local law enforcement agency or any other person in order to determine whether the law enforcement agency conducted a valid investigation. If the committee determines that a law enforcement agency’s investigation of the officer’s conduct did not constitute a valid investigation or was not fully completed the committee or director shall direct the complaint to be investigated.” RSA 106-L:21, V. The agency may be required to complete additional investigatory or reporting steps, or to cooperate with subsequent investigation by Police Standards & Training investigators. RSA 106-L:20, III; RSA 106-L:21, V.
- E.** If the Chief of Police of the law enforcement agency is the subject of the investigation, this reporting shall be completed by the appropriate hiring authority.
- F.** The law enforcement agency must submit through Benchmark an appropriate “Form B – Status Change” for any law enforcement officer placed on paid or unpaid administrative leave or temporarily demoted during a pending internal investigation and the subsequent return from leave. The law enforcement agency must also submit a “Form B” if discipline is imposed involving a change of status including but not limited to suspension, demotion, or termination.

## **VI. RETALIATION**

Discriminatory, disciplinary, or other retaliatory action against a member of the public or an employee related to the making of a good faith complaint or participation in an internal investigation is strictly prohibited. Such acts will form the basis for charges of misconduct and may result in serious disciplinary action and/or criminal prosecution.