



POLICY & PROCEDURE

KEWASKUM POLICE DEPARTMENT

SUBJECT:	CITIZEN COMPLAINTS/ INTERNAL AFFAIRS	NUMBER:	<u>4.03</u>
SCOPE:	All Department Personnel	ISSUED:	<u>12/19/2018</u>
DISTRIBUTION:	Policy & Procedure Manual	EFFECTIVE:	<u>12/19/2018</u>
REFERENCE:	WI State Statutes: 19.34, 62.13(5), 66.0511(3), 946.66, Chapter 164 2021 WI Act 182	<input type="checkbox"/> RESCINDS <input type="checkbox"/> AMENDS WILEAG 5 TH EDITION STANDARDS: 1.9.1, 1.9.2, 1.9.3, 1.9.4, 1.9.5, 1.9.6	

INDEX AS: Citizen Complaints of Service
Complaints against Police
Disciplinary System
Internal Affairs
Internal Investigations

PURPOSE: The purpose of this Policy & Procedure is to promote the integrity of the Kewaskum Police Department by establishing procedures that will assure the prompt and thorough investigation of alleged or suspected employee misconduct. Such procedures will document circumstances on the date of the initial report, exonerate the innocent, establish responsibility and accountability, and facilitate prompt and just disciplinary action if appropriate.

This Policy & Procedure consists of the following numbered sections:

- I. POLICY
- II. DEFINITIONS
- III. COMPLAINT PROCESS
- IV. COMPLAINT INVESTIGATION
- V. INVESTIGATIVE TOOLS AND RESOURCES

- VI. RIGHTS OF EMPLOYEES UNDER INVESTIGATION
- VII. STATUS OF EMPLOYEES UNDER INVESTIGATION

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I. POLICY

- A. It is the policy of the Kewaskum Police Department that all incidents of alleged or suspected violations of law, ordinances or Department rules, regulations or Policy & Procedures must be investigated and reported in writing. The incidents include those reported to any officer by:
 - 1. Members of the Department, either orally or in writing;
 - 2. Citizens (including prisoners) in person, by telephone, by correspondence, either signed or anonymous; and
 - 3. Those violations observed or suspected by officers.
- B. The Department encourages citizens to bring forward any legitimate complaint regarding misconduct by employees. It also recognizes that false complaints are occasionally made against the agency or its employees. Nevertheless, all complaints must be investigated to protect the integrity of the agency and its employees and to instill public confidence in the agency. In some cases, the extent of an investigation may be limited to substantiating the falsity of a complaint.
- C. This policy ensures that WI State Statute 66.0511(3) is adhered to by the Department, which has a specific written procedure that is available for public scrutiny for processing and resolving a complaint by any person regarding the conduct of a law enforcement officer or other member employed by the Department.

II. DEFINITIONS

- A. "Criminal investigation" means the process of investigation into alleged acts of misconduct that, if substantiated, may be the basis for filing criminal charges.
- B. "Informal inquiry" means a meeting between supervisory personnel and an employee who has become the subject of a procedural or misconduct complaint for the purpose of mediating the complaint or discussing the facts to determine whether a formal investigation should be initiated.
- C. "Internal investigation" means the process of investigation into alleged acts of misconduct that, if substantiated, may be the basis for filing administrative charges.

- D. "Minor misconduct complaint" means a complaint based on allegations of minor misconduct by employees of the Department. Examples of minor misconduct include, but are not limited to, rudeness or verbal abuse by an officer, traffic infractions by an officer, minor rules and regulations violations, etc.

A determinant of minor misconduct is that the alleged infraction, if substantiated, could result in disciplinary action ranging from a counseling session to a written reprimand.

- E. "Procedural complaint" means a complaint based on employee actions that, if performed properly, would be in compliance with applicable legal guidelines and Department policies, e.g., complaints regarding towing of vehicles, parking, traffic enforcement, etc.

- F. "Serious misconduct complaint" means a complaint based on allegations of serious misconduct by employees of the Department. Examples of serious misconduct include, but are not limited to, corruption, brutality, misuse of force, breach of civil rights, criminal conduct, or repeated acts of minor misconduct. A determinant of serious misconduct is that the alleged infraction, if substantiated, could result in disciplinary action up to and including suspension, dismissal and/or criminal charges.

III. COMPLAINT PROCESS

- A. Employees shall courteously and promptly record a complaint against a member of the Department as follows:

1. Any individual seeking to make a formal complaint against any police personnel shall be instructed to contact either the Lieutenant or Chief of Police.
2. The complaint shall be reduced to writing and a statement of facts signed by the complainant. The complaint will then be reviewed by the Chief of Police to insure its sufficiency.
3. Generally, any complaint of this nature will be investigated by either the Lieutenant or Chief of Police. The investigating officer shall:
 - a) Obtain statements from complaints and any witnesses.
 - b) Advise complainants and witnesses that they may to appear at a hearing or court appeal.
 - c) Request a detailed written report of the situation from the member complained against, if appropriate.
 - d) Make a written finding of facts and a recommendation to the Chief of Police on what action should be taken. The decision of the Chief of Police will be

final; however an appeal by either party may result in further investigation or referral to the Police and Fire Commission.

- B. Employees may attempt to resolve the complaint, but shall never attempt to dissuade a citizen from lodging a complaint against a member of the Department.
- C. False reports of police misconduct.
 - 1. Citizens found to have filed false reports of police misconduct may be arrested by the Chief of Police and referred to the District Attorney's Office for charges under State Statute 946.66.

IV. COMPLAINT INVESTIGATION

- A. All complaints against the Department or its employees, including those received anonymously, will be courteously received and thoroughly investigated. A known complainant shall be notified of the receipt of their complaint and the complaint's impending investigation.
- B. During the preliminary investigation, the receiving supervisor shall determine whether the complaint is based on procedure, minor misconduct, or serious misconduct and whether the complaint would be best resolved through an informal inquiry, internal investigation, or criminal investigation.
 - 1. Internal investigation shall be pursued if it appears that the allegations, if substantiated, could result in discipline greater than a letter of reprimand.
- C. Serious misconduct complaints shall require notification of the Chief of Police as soon as such notification is practicable. Upon reviewing the complaint, the Chief of Police shall either conduct the internal investigation or assign the investigation to the Lieutenant. In the event a criminal investigation is deemed appropriate, an investigation shall be conducted by another investigator or, with the approval of the Chief, the assistance of an outside investigative agency shall be utilized. When assigned to the Lieutenant, the Chief of Police shall supervise completion of the investigation.
- D. Absent exceptional circumstances, e.g., the investigation of ongoing acts of misconduct, internal investigations shall be completed in a timely manner, or as soon as practicable from the receipt of the complaint.
- E. Upon conclusion of an investigation, the Lieutenant shall make a recommendation to the Chief regarding final disposition of the matter.
- F. Unless otherwise directed by the Chief of Police, all investigated complaints shall be completed whether or not the complainant follows through with the investigation.
- G. Upon conclusion of an investigation, the Chief of Police shall ensure that the complainant and the employee are advised in writing of the final outcome of the internal investigation. For lengthy investigations, an effort shall be made to communicate the status of the investigation to the complainant on a periodic basis.

V. INVESTIGATIVE TOOLS AND RESOURCES

A. Medical and Laboratory Examination

1. Any supervisor may, based upon their observation, require a Department employee to submit to a test for alcohol or drug use while on duty, in accordance with the Village's personnel policies.
2. Alcohol tests shall not be given arbitrarily. The basis for the test is a suspected violation of a law, rule, procedure or Policy & Procedure.
3. When ordered by the Chief of Police, employees shall be required to submit to any additional medical and laboratory examinations that are specifically directed and narrowly related to an internal investigation.
4. If at any time the investigator determines an investigation is likely to result in criminal charges being brought against an employee under investigation, the investigator shall confer with the Village Attorney or the Department's legal advisor before proceeding under this section.

B. Release of Medical Records

1. In investigating all incidents involving injury, the investigator shall obtain a signed release of the person's medical records.

C. Photograph and Lineup Identification Procedures

1. If ordered by the Chief, an employee shall submit to being photographed for the purpose of creating a photographic line-up when such a lineup is needed to identify an employee accused of misconduct.
2. If ordered by the Chief, an employee shall be required to stand in a line-up for the purpose of identifying an employee accused of misconduct.

D. Financial Disclosure Statements

1. If ordered by the Chief of Police, an employee shall be required to make financial disclosure statements when such statements are directly and narrowly related to an internal investigation.

E. Physical Evidence

1. Proper chain of evidence management and control shall be maintained for all physical evidence collected during an internal investigation.

VI. RIGHTS OF EMPLOYEES UNDER INVESTIGATION

- A. When an employee is notified that they are the subject of an internal investigation, the employee shall be provided a written statement of the allegations and their rights and responsibilities related to the investigation.

- B. The rights of an employee under investigation shall be determined by the nature of the investigation. Rights associated with an administrative investigation shall differ from those associated with a criminal investigation. In a situation where the investigation may result in criminal charges being brought against an employee under investigation, the employee shall be afforded rights consistent with a criminal investigation.
1. Employee rights and procedural safeguards under WI State Statutes, Chapter 164: Law Enforcement Officer's Bill of Rights shall be adhered to.
 - a) The law enforcement officer under investigation shall be informed of the nature of the investigation prior to any interrogation.
 - b) At the request of any law enforcement officer under interrogation, he or she may be represented by a representative of his or her choice who, at the discretion of the officer, may be present at all times during the interrogation.
- C. During an internal investigation an employee may be compelled to answer questions directly related to their official duties. Answers received in such a manner may not be used in a criminal proceeding involving the employee. Prior to any questioning, the employee shall be read the Internal Investigations Rights/Warnings Statements (Garrity).
- D. The following guidelines shall apply to an interview during an investigation for strictly administrative purposes:
1. The purpose of the investigation is to obtain information to determine whether disciplinary action is warranted. The answers obtained may be used in disciplinary proceedings up to and including reprimand, demotion, suspension, or dismissal.
 2. All questions asked of an employee under investigation that are specifically related to employment must be fully and truthfully answered. Refusal to answer may result in disciplinary action.
 3. No reading of Miranda rights is required.
 4. As determined by Garrity v. New Jersey, 385 U.S. 483, 87 S. Ct. 616 (1967), an employee has no Sixth Amendment right to counsel as the interview does not serve a criminal prosecution.
- E. During a criminal investigation involving an employee, an investigator shall do the following prior to the interview with the accused employee, as applicable:
1. Advise the employee of his or her Miranda rights, including obtaining a written waiver of those rights, if the employee elects to do so.

2. Advise the employee that if he or she asserts their right not to answer questions, no adverse administrative action will be taken based upon such refusal, as the decision in Gardner v. Broderick, 392 U.S. 273, 88 S. Ct. 1913, 1916 (1968) indicates that a public employee may not be fired for asserting their Fifth Amendment privilege not to incriminate themselves.
 - a) If an employee elects to answer questions, their responses may be used in both criminal and administrative proceedings.

VII. STATUS OF EMPLOYEES UNDER INVESTIGATION

A. Immediate Temporary Suspension or Change of Duties

1. An officer complained against may be immediately suspended from duty with pay when such suspension will assist in protecting the best interest of the community, the department and the officer.
2. A temporary suspension may be imposed:
 - a) When a member is found by a superior officer to be under the influence of alcohol or drugs while on duty, or in a mental or physical state which presents a danger to the officer or others.
 - b) When it is alleged that the officer engaged in illegal activity
 - c) When his/her presence on duty could jeopardize or appear to jeopardize the impartiality of an investigation.
3. A temporary change of duties may be assigned to a member complained against when there exists an assignment closely related to the nature of the complaint. A temporary change of duties should be made when the member's presence in an original assignment may jeopardize or appear to jeopardize the impartiality of an investigation.
4. An immediate temporary suspension or change of duties is not necessarily intended as an act of discipline, but rather as an attempt to reserve the fairness of the complaint process.

B. CRIMINAL CONDUCT

1. When an act complained of is a crime and the evidence is such that had the action been committed by a private person it would have resulted in their arrest, the Lieutenant shall explain the circumstances to the Chief of Police and request a decision whether:
 - a) The accused employee should be arrested forthwith; or
 - b) A warrant for the employee's arrest should be obtained; or
 - c) Criminal proceedings should be deferred pending further investigation.

VIII. COMPLAINT ADJUDICATION

- A. At the end of the investigating officer's reports, a conclusion of fact must be stated for each allegation of misconduct from the following dispositions:
1. Proper Conduct: The allegation is true, but the action of the agency or employee was consistent with departmental policy.
 2. Improper Conduct: The allegation is true and the action of the agency or employee was inconsistent with department policy.
 3. Policy Failure: The allegation is true and although the action of the agency or the employee was not inconsistent with department policy, the complainant suffered harm.
 4. Insufficient Evidence: There is insufficient evidence to prove or refute the allegation.
 5. Unfounded Complaint: Either the allegation is demonstrably false, or there is no credible evidence to support it.
- B. All completed investigations shall be maintained in the Department's internal affairs files located in the Chief's Office.
- C. Per 2021 WI Act 82, effective November 8th, 2021, all disciplinary files that are classified as SUBSTANTIATED shall be included in each Department member's employment file.

IX. ANNUAL REVIEW

- A. At least once every year the Chief or designee shall review and document all citizen complaints/internal affairs reports to determine any patterns, policy issues, training, or disciplinary matters that require attention or any type of future action. If the review is conducted by a designee, the results shall be documented and forwarded to the Chief.

Thomas F. Bishop
Chief of Police

This Policy & Procedure cancels and supersedes any and all previous written directives relative to the subject matter contained herein.

Initial 12/19/2018, Revised 01/19/2022