

HUNTERDON COUNTY PROSECUTOR'S OFFICE

STANDARD OPERATING PROCEDURES



SUBJECT: INTERNAL AFFAIRS	
EFFECTIVE DATE: JUNE 2, 2023	NUMBER OF PAGES: 37
ACCREDITATION STANDARDS: 1.3.1, 1.4.3	BY THE ORDER OF: County Prosecutor

PURPOSE: The purpose of this directive is to maintain a high quality of law enforcement services. Improving the relationship between employees and the public facilitates cooperation vital to the agency's ability to achieve its goals. This agency is committed to providing law enforcement services that are fair, effective, and impartially delivered. Employees are held to the highest standards of conduct and are expected to respect the rights of all citizens. An effective disciplinary framework permits agency personnel to monitor employee compliance with agency directives, assist employees in meeting agency objectives, enhance performance, and permit managers to identify problem areas, which require increased training or direction. Finally, this directive shall ensure fundamental fairness and due process protection to citizens and employees alike.

POLICY: The Hunterdon County Prosecutor's Office adopts and implements the policies and procedures as directed by the Attorney General Directive 2019-5, the Attorney General Internal Affairs Policy and Procedure, and as required by N.J.S.A. 40A:14-181. It is the policy of the Hunterdon County Prosecutor's Office to accept and investigate all complaints of sworn and prosecutorial employee's alleged misconduct or wrongdoing from all persons, including anonymous sources, who wish to file a complaint, regardless of the hour or day of the week. This includes reports from anonymous sources, juveniles, undocumented immigrants, and persons under arrest or in custody. All allegations of employee misconduct shall be thoroughly, objectively, and promptly investigated to their logical conclusion in conformance with this policy, regardless of whether the employee resigns or otherwise separates from the agency. Employees, regardless of rank or assignment shall be subject to disciplinary action for violating their oath and trust. Committing an offense punishable under the laws of the United States, or the State of New Jersey constitutes a violation of that oath and trust. Employees are also subject to disciplinary action for the willful or negligent failure to perform the duties of their rank or assignment. In addition, employees may be disciplined for violation of any rule or regulation of the agency or for failure to obey any lawful instruction, order, or command of a superior officer or supervisor. Disciplinary action in all matters will be determined based upon the merits of each case. Employees conducting the investigation of any allegation of misconduct shall strive to conduct a thorough and objective investigation respecting the rights of the principal, any other law enforcement officer, and all members of the public. Accordingly, any supervisor who may be called upon to conduct an internal investigation must be thoroughly familiar with the agency's Internal Affairs policy..

PROCEDURE:

I. INTERNAL AFFAIRS RELATED FORMS AND REPORTS:

- A. The following forms/reports shall be used in accordance with this written directive.
1. **Internal Affairs Civilian Complaint Information Sheet – (Appendix A):** This form, which explains the Office’s internal affairs procedures, shall be provided to all citizen complainants.
 2. **Internal Affairs Report Form – (Appendix B):** This form shall be utilized by Office employees to document a reportable incident by all complainants.
 3. **Internal Affairs Complaint Notification Form – (Appendix C):** This form, when appropriate, shall be served to an employee who is the principal of an internal affairs investigation.
 4. **Immediate Suspension Notice – (Appendix D):** This form shall be used upon the immediate suspension of an employee.
 5. **Disarming Notice – (Appendix E):** This form shall be used when a law enforcement officer is disarmed and relieved of their law enforcement obligations, whether temporary or permanently.
 6. **Complaint Acknowledgement/10-Day Response Letter – (Appendix F):** A written notification to the complainant, if their identity is known, that their complaint was received by the Professional Standards Unit and will be investigated accordingly. (Sample language attached).
 7. **Executive Summary – (Appendix G):** This form is used to summarize an investigation wherein there is the potential for criminality and a review by the First Assistant Prosecutor is warranted.
 8. **Internal Affairs Review Form – (Appendix H):** This form is used in conjunction with the Executive Summary and will be used to notify the investigator whether the Hunterdon County Prosecutor’s Office will proceed with either a criminal investigation or an administrative investigation.
 9. **Witness Acknowledgment Form – (Appendix I):** The form shall be used during internal affairs investigation interviews when interviewing a witness in an internal affairs investigation.
 10. **Principal Administrative Investigations Advisement Form – (Appendix J):** This form shall be used during internal affairs investigation interviews when interviewing the principal in an internal affairs investigation.
 11. **Weingarten Representative Acknowledgement Form – (Appendix K):** This form shall be provided to the Weingarten representative present during an internal affairs interview.
 12. **Use Immunity “Garrity” Form – (Appendix L):** This form shall be used to advise a target employee that he/she is being given use immunity in exchange for his/her statement.

13. **Miranda Card/Form– (Appendix M):** This form shall be used in an internal affairs investigation when interviewing an employee accused of committing a crime.
14. **Internal Affairs Investigation Summary and Conclusions Form – (Appendix N):** This form shall summarize the case and provide conclusions of fact for each allegation.
15. **Internal Affairs Investigation Reports: Front Page and Continuation– (Appendix O):** This report will be an objective recounting of all the relevant information the investigation disclosed, including statements, documents, and other evidence. Such report shall contain a complete account of the investigation.
16. **Internal Affairs Attachment Log – (Attachment P):** This form shall be used to account for all attachments accumulated during the investigation.
17. **Supervisor Review Form – (Attachment Q):** This form is used when a completed internal investigation and the investigation disposition is reviewed by the Professional Standards Unit supervisor, the division Captain, and/or the Chief of Detectives.
18. **Performance Notice – (Appendix R):** A Performance Notice shall be completed by a supervisor to memorialize the corrective action taken to address an employee’s performance deficiency. A Performance Notice may also be used to commend an employee for positive performance.
19. **Reprimand Notice – (Appendix S):** A Reprimand Notice shall be used when documenting verbal and written reprimands. Additionally, it shall be used to formally notify the principal of discipline approved by the Chief of County Detectives or designee in connection with the completed internal affairs investigation. A Reprimand Notice shall only be used for discipline that exceeds counseling, training, but does not exceed a written reprimand.
20. **Preliminary Notice of Disciplinary Action Form – (Appendix T):** This form shall be used to formally notify the principal of charges approved by the Chief of County Detectives in connection with the completed internal affairs investigation. This disciplinary forms shall only be used for charges that exceed a written reprimand.
21. **Final Notice of Disciplinary Action Form – (Appendix U):** This form shall be used to formally notify the principal of charges approved by the Chief of County Detectives in connection with the completed internal affairs investigation. This disciplinary forms shall only be used for charges that exceed a written reprimand.
22. **Internal Affairs Reporting Forms – (Appendix V):** These reports shall be submitted to the New Jersey Attorney General’s Office and others as required.
23. **Annual Major Discipline Reporting Form – (Appendix W):** The form used to release a synopsis of each internal affairs case including the identity of each employee subject to final discipline, a full explanation of the rule,

regulation, policy, directive, or law violated, a factual summary of their conduct, and a statement of the sanction imposed as identified in III, 12, a-1 of this policy.

24. **Acknowledgment of Confidentiality of Internal Affairs and Personnel Records to Requesting Agency – (Appendix X):** The form is used when an outside agency requests the release of internal affairs related files and/or personnel records to them.

II. DEFINITION OF TERMS:

- A. **Reportable Incident:** is any behavior, performance, or non-performance that may violate department rules, regulations, procedures, applicable criminal and civil laws, and the United States or New Jersey Constitutions. All reportable incidents shall be carefully and thoroughly reviewed by the Professional Standards Unit to determine the manner of response that best serves the public, the agency, and the employee. Reportable Incidents classified as misconduct will result in an internal investigation conducted in accordance with the New Jersey Attorney General's Internal Affairs Directive and this written directive. Reportable incidents include, but are not limited to the following:
1. A complaint that an employee has engaged in any form of misconduct, as defined in this written directive, whether on or off-duty;
 2. An alleged violation of any of the Hunterdon County Prosecutor's Office Rules and Regulations;
 3. An alleged violation of any written directive issued by this Office or appropriate authority as defined by ordinance;
 4. A refusal to or a failure to comply with a lawful written or verbal order, directive, or instruction;
 5. The filing of a civil suit by a civilian alleging any misconduct by an employee while on duty or acting in an official capacity;
 6. The filing of a civil suit against an employee for off-duty conduct while not acting in an official capacity that alleges racial bias, physical violence, or threat of physical violence;
 7. Criminal arrest of or filing of a criminal charge against an employee;
 8. Allegation(s) that an employee is either a victim or an alleged perpetrator of a domestic violence incident.
- B. **Classification:** There are three classifications of a reportable incident. All reportable incidents shall be forwarded to the Professional Standards Unit to screen, record and classify the incident as one of the following (**See Figure #1**):

NOTE: All allegations of misconduct, whether criminal or administrative, regardless of the source of the allegation shall result in an internal investigation.

1. Criminal Misconduct - Reportable incidents against a sworn member of the Hunterdon County Prosecutor's Office, classified as criminal misconduct must be immediately reported to the Chief of Detectives. No further action shall be taken, including the filing of charges against the employee, until directed by the Chief of Detectives and/or the Prosecutor. If the incident involves a member of the executive staff, notification must be made to the Office of the New Jersey Attorney General's Office. No further action shall be taken, including the filing of charges against the employee, until after consultation with and direction from the Office of the New Jersey Attorney General.
 - a. Criminal Misconduct is defined as a reportable incident where there is an allegation of a crime or an offense.
 - b. Allegations of crimes shall be documented on the Executive Summary Form and reviewed by the First Assistant Prosecutor (FAP) prior to any investigation. The First Assistant Prosecutor will determine if the investigation remains as a criminal investigation or if the Prosecutor's Office will decline criminal prosecution at that time. In either instance, the First Assistant Prosecutor shall sign the IA Review Form, advising whether the investigation will proceed as a criminal investigation or an administrative investigation. The IA Review Form shall be provided to the principal prior to any interview.
2. Administrative Misconduct - An incident may be classified as administrative misconduct in which case an investigation shall be conducted in accordance with this written directive.
 - a. Administrative Misconduct is defined as a reportable incident where there is a serious violation of agency rules and regulations, written directive; or conduct, which adversely reflects upon the employee or the Hunterdon County Prosecutor's Office.
 - b. Repeat performance deficiencies may be classified as administrative misconduct.
3. Performance Deficiency - An incident which is classified as a performance deficiency shall be referred to the supervisor for addressing through non-disciplinary corrective actions, (corrective action shall be training or counseling only).
 - a. A performance deficiency is defined as a reportable incident of a minor rule infraction that can be addressed at the supervisory level of an employee. This agency recognizes that not all reportable incidents constitute misconduct and certain reportable incidents are more effectively handled outside of the disciplinary process. Performance deficiency incidents **are not** internal affairs investigations.

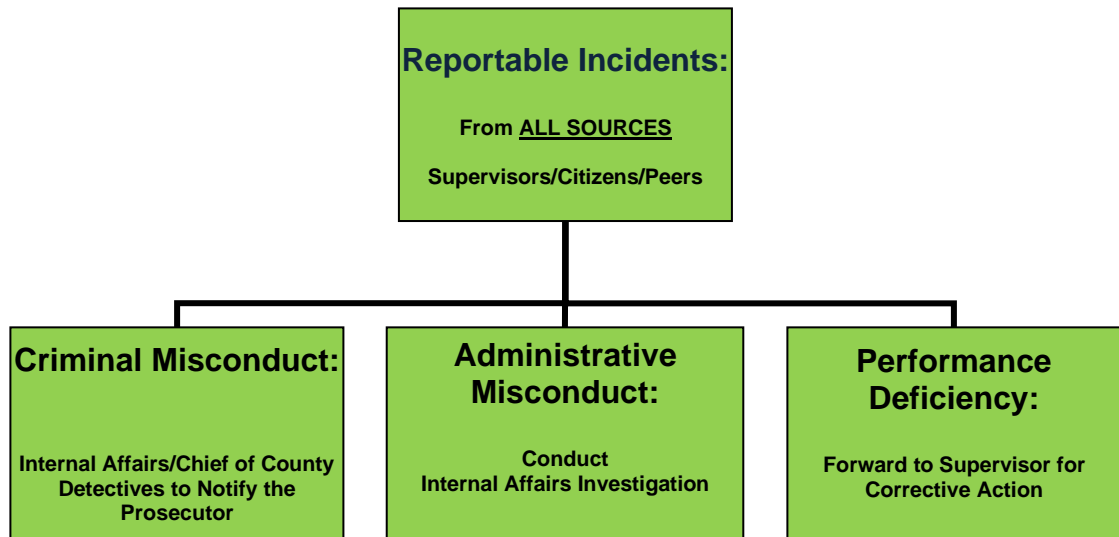


Figure #1 (Classification Process)

III. GUIDING PRINCIPLES

- A. The investigative process seeks to locate and identify all evidence available to either prove or disprove allegations made against an employee.
- B. With the exception of internal investigations that are part of an ongoing or potential criminal investigation, the majority of internal investigations are administrative in nature. Unlike criminal investigations where the burden of proof is beyond a reasonable doubt, the standard for administrative cases is a preponderance of the evidence.
- C. It is important that strict rules of evidence and certain constitutional protections that apply in criminal cases do not attach to these investigations. In accordance with established case law, the investigator, reviewing authority and the Chief of County Detectives can rely on types of evidence that would be inadmissible in a criminal proceeding providing, there is some indication of reliability.
- D. Furthermore, unlike criminal investigations, certain specific legal protections that arise in employment & labor matters and in law enforcement discipline matters apply to employees subject to an internal investigation. These include rights and practices commonly referred to as Weingarten, Loudermill, and Garrity rights, as well as contractual rights or those based on state or federal statute.
- E. Investigators and reviewers shall scrupulously adhere to the principles that all employees shall be afforded all rights to which they are entitled. At the same time, investigative and review personnel will be aware of their obligations to determine the facts of each case utilizing investigative methods, which are consistent with acceptable practices in employee discipline cases.
- F. Internal affairs investigations shall not rely solely on the outcome of related criminal matters or traffic matters. The conviction or acquittal of a complainant shall not be dispositive as to the complaint regarding the employee's conduct related to the incident. However, the court proceedings will be relevant and should be reviewed. Unless otherwise determined, most cases involving a court action will require the

collection and analysis of court records and transcripts of court appearances by the principal, complainant, or critical witnesses. The investigator should make every attempt to attend court proceedings, to monitor the progress/outcome of the case. As a monitor, the investigator need not notify the prosecutor, judge, or other court personnel of his/her presence and should not have any input in the proceedings.

- G. If, in addition to an internal affairs complaint, criminal and/or traffic complaints are signed against an employee, a not guilty disposition of the court shall not automatically determine the outcome of the internal complaint. However, it will be relevant and part of the investigation.
- H. As internal affairs investigators, a tendency to automatically grant more credibility to statements given by employees of the agency and other law enforcement officials than to statements given by civilian complainants and witnesses must be carefully avoided. In certain situations where the credibility and motive of the complainant is reasonably suspected, a credibility determination may be made. However, investigators, unless otherwise authorized, will investigate the relevant facts of the allegations and not the background or motive of the complainant, unless relevant to the investigation.
- I. It is the policy of the Hunterdon County Prosecutor's Office that personnel conducting internal investigations deal with complainants, witnesses, and principals in a professional manner. This includes being prepared for interviews, promptly responding to phone calls, and handling all related contacts during an investigation to leave citizens and employees alike with the impression that a thorough, fair, and impartial investigation of the allegation(s) will be conducted.
- J. Discovery of additional allegations and identification of additional principals:
 - 1. In conducting investigations, the propriety of all conduct by the employee relating to the subject matter of the investigation shall be reviewed.
 - 2. If during the course of an investigation, the investigator has reason to believe that misconduct occurred, other than that alleged, the investigator shall:
 - a. Complete and serve additional internal affairs complaint notification forms as required. The investigator shall investigate the additional allegation(s) to its logical conclusion.
 - 3. If during the course of an investigation, the investigator has reason to believe that another employee may have been involved in alleged misconduct and should be interviewed as a principal, the investigator shall:
 - a. Complete an Internal Affairs Complaint Notification Form for further review by the Professional Standards Unit supervisor. Upon review, the new principal shall be served with the letter and the investigation should continue.
- K. The New Jersey Resiliency Program for Law Enforcement
 - 1. Under no circumstances, shall an employee face any type of discrimination or adverse internal affairs consequences for the sole reason that the

employee decided to seek medical or psychological treatment for a mental health concern, including depression, anxiety, post-traumatic stress disorder, or substance use disorder.

2. All employees are encouraged to take advantage of the resources provided by the New Jersey Resiliency Program for Law Enforcement, as well as the other resources identified in Attorney General Directive 2019-1.

IV. PROFESSIONAL STANDARDS UNIT

- A. The Professional Standards Unit is herein established. The Professional Standards Unit supervisor shall have direct access to the County Prosecutor and Chief of County Detectives on all matters involving internal affairs. Personnel assigned to the Professional Standards Unit shall serve at the pleasure of and be directly responsible to the County Prosecutor and Chief of Detectives. The Chief of Detectives shall not assign any person responsible for the representation of employees of the collective bargaining function to the Professional Standards Unit.
 1. Investigators must recuse from cases where they have a conflict of interest that may prevent them from being impartial in the investigation of a subject employee. Conflicts of interest shall be documented in a memo to the Chief of Detectives for review. The Chief of Detectives shall determine if the investigator is recused from the investigation.
 2. Personnel assigned to the Professional Standards Unit shall complete training as mandated by the Division of Criminal Justice.
 - a. Personnel may attend additional training on internal affairs provided by other sources.
- B. The goal of Professional Standards Unit is to ensure that the integrity of the agency is maintained through a system of internal discipline where fairness and justice are assured by objective, impartial investigation, and review.
- C. Under no circumstances may the internal affairs investigatory function be contracted or delegated to a private entity.
 1. Instead, when necessary, the Hunterdon County Prosecutor's Office may request that an internal affairs complaint be investigated directly by the Attorney General's Office, who shall determine whether to investigate the matter, refer the matter to the Internal Affairs function of another law enforcement entity, or return the matter to the Hunterdon County Prosecutor's Office, if the Attorney General's Office determines that the Office can appropriately investigate the matter.
 2. Nothing in this written directive shall prevent the Hunterdon County Prosecutor's Office from retaining a qualified private individual to serve as a hearing officer or an expert witness.
- D. Professional Standards Unit Supervisor shall be responsible for:
 1. The management of the Professional Standards Unit.

2. The investigation and review of internal affairs investigations within the agency, in coordination with other IA investigators.
3. The immediate notification of the Captain and Chief of County Detectives of any allegation of wrongdoing on the part of an employee that would constitute a criminal offense or has the potential to have a significant negative impact on the operation or reputation of the agency.
4. The maintenance of a comprehensive central file and recordkeeping system on all complaints received by this agency, whether investigated by Professional Standards Unit personnel or assigned to an employee's supervisor for investigation and disposition. The Hunterdon County Prosecutor's Office utilizes IA Pro as the central file and recordkeeping system. Additionally, there are physical investigative files, maintained in locked filing cabinets.

E. Professional Standards Unit shall be responsible for:

1. The investigation and review of all allegations of misconduct by employees of the Hunterdon County Prosecutor's Office.
2. The screening of internal affairs complaints from municipal and other county agencies. Internal affairs complaints from municipal and other county agencies shall be documented in IA Pro; once the outside agency completes their investigation, the disposition shall be entered into IA Pro.
 - a. In instances where there is an allegation of a crime or offense, or where there is the potential of criminality, the internal affairs investigation shall review all available documentation and evidence and submit an Executive Summary and IA Review Form to the First Assistant Prosecutor. A review and approval must be completed by the FAP prior to an IA investigation being relinquished back to a municipal or other county agency,
 - b. If the subject of the internal affairs complaint is the Police Chief, Police Director, Sheriff, a member of the command staff, or the Internal Affairs investigator, the Hunterdon County Prosecutor's Office shall handle the investigation in the same manner as their own internal investigations. At times, the Professional Standards Unit may request that the subject agency's internal affairs investigator assist with certain tasks and assignments in furtherance of the investigation.
 - c. In administrative investigations, the Professional Standards Unit shall provide guidance and assistance to municipal and other county agencies when requested and necessary, but the Professional Standards Unit will not conduct the administrative investigation for municipal and/or other county agencies.
 - d. The Professional Standards Unit is responsible for auditing and reviewing internal affairs investigations handled by municipal and/or other county agencies.
 - i. The Professional Standards Unit shall conduct reviews of agencies with concerning patterns. If concerning patterns emerge in a municipal

and/or other county agency, the Professional Standards Unit shall direct that agency to share their internal affairs files for the purpose of facilitating further investigation.

ii. The Professional Standards Unit shall also conduct random reviews of the internal affairs functions of municipal and/or other county agencies to ensure internal affairs guidelines are being rigorously observed both in procedures and in the substance of the results.

3. In addition to investigations concerning allegations of misconduct, the Professional Standards Unit shall receive notice of:
 - a. Any firearm discharge by Hunterdon County Prosecutor's Office personnel, municipal agency personnel and/or other county agency personnel, whether on-duty or off-duty, unless the discharge occurred during the course of a law enforcement training exercise; routine target practice at a firing range; a lawful animal hunt; or the humane killing of an injured animal;
 - b. Any discharge of an agency-owned firearm by anyone other than agency personnel;
 - c. Any use of force by Hunterdon County Prosecutor's Office personnel, municipal agency personnel and/or other county agency personnel regardless of whether or not it results in injury;
 - d. Any vehicular pursuit involving Hunterdon County Prosecutor's Office personnel, municipal agency personnel and/or other county agency personnel; and
 - e. Any collision involving agency-owned vehicles.

Once notification has been received, internal affairs will determine whether additional investigation is necessary. All incidents listed in bullets a through e shall be documented in IA Pro. The report(s), Meaningful Review, and any other associated documentation/evidence shall be maintained in the Professional Standards Unit.

4. The Professional Standards Unit shall conduct a manual or computerized audit of its records to determine if personnel from the Hunterdon County Prosecutor's Office, municipal agency personnel and/or other county agency personnel has the emergence of a pattern, practices, or trend of inappropriate behavior or misconduct. The Professional Standards Unit is responsible for the management and oversight of the Early Warning System pursuant to the Early Warning System SOP.
5. The Professional Standards Unit may conduct an internal affairs investigation on their own initiative upon notice to, or at the direction of the Professional Standards Unit supervisor and may be responsible for any other investigation as directed by the Chief of Detectives and/or the County Prosecutor.
6. The Professional Standards Unit may also conduct staff inspections on their own initiative or at the direction of the Chief of Detectives. Inspections shall determine if personnel are properly implementing policies. The inspection

function is also responsible for reviewing and evaluating procedures, material resources, and the utilization of those resources. Deficiencies and recommendations for improvement shall be made to the Chief of Detectives.

7. The Professional Standards Unit may refer reportable incidents classified as a performance deficiency to an employee's commander for investigation and corrective action with notice and approval from the Chief of Detectives.
8. The Professional Standards Unit investigators or personnel temporarily assigned to that function shall have the authority to interview any employee of the agency and to review any record or report of the agency relative to their assignment. Requests from the Professional Standards Unit personnel, in furtherance of their duties and responsibilities, shall be given full cooperation and compliance as though the requests came directly from the Chief of Detectives. Employees assigned to the Professional Standards Unit come under the direct authority of the Chief of Detectives.
9. Notification to the Office of the New Jersey Attorney General
 - a. The Prosecutor or designee shall notify the New Jersey Office of the Attorney General when there is a misconduct complaint made against, or an allegation of criminal wrongdoing by a member of the Hunterdon County Prosecutor's Office executive personnel.
10. On an annual basis, as per the New Jersey Attorney General's IAPP, the Hunterdon County Prosecutor's Office shall publish on its public website a report summarizing the types of complaints received against Hunterdon County Prosecutor's Office personnel and the dispositions of those complaints. This report **should** be statistical in nature.
11. Additionally, the Hunterdon County Prosecutor's Office shall on a periodic basis, no later than January 31st of the following year submit to the Attorney General and publish on the agency's public website, a brief synopsis of all misconduct by personnel of the Hunterdon County Prosecutor's Office, in accordance with a thru I listed below. The synopsis of each case shall follow the format as dictated provided in Appendix W (updated November 2022) and shall include the identity of each law enforcement officer subject to final discipline, a full explanation of the rule, regulation, policy, directive, or law violated, a factual summary of their conduct, and a statement of the sanction imposed. This synopsis shall not contain the identities of the complainants or any victims. Where discipline relates to domestic violence, the synopsis shall not disclose the relationship between a victim and a law enforcement officer. In rare circumstances, further redactions may be necessary to protect the identity of a victim. Whenever practicable, notice shall be given to victims of domestic or sexual violence in advance of an agency's disclosure of discipline related to the incident. The synopsis shall include all misconduct where an agency member:
 - a. Was terminated;
 - a. Was reduced in rank or grade;
 - c. Was assessed a suspension of more than five (5) days.

- 1) A suspension of more than five days shall be broadly construed to include any disposition involving a suspension of more than 40 hours of time or the equivalent of five days/shifts if less than 40 hours, regardless of whether any of the suspension time was suspended or held in abeyance. It shall include the loss of vacation, sick or leave time totaling more than 40 hours or the equivalent of five days/shifts. It shall include any combination of suspension time assessed plus loss of vacation, sick or leave time that aggregates to more than 40 hours or the equivalent of five days/shifts. It shall also include any fine that exceeds the gross value of 40 hours, or the equivalent of five days/shifts, of pay;
- d. Had a sustained finding of discrimination or bias against any person because of the individual's actual or perceived race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, sex, gender identity or expression, disability, nationality, familial status, or any other protected characteristic under N.J.S.A. 10:5-1 et seq., regardless of the type or severity of discipline imposed;
 - e. Had a sustained finding that a law enforcement officer utilized excessive force in violation of agency policy or the Attorney General's Use of Force Policy, regardless of the type or severity of discipline imposed;
 - f. Had a sustained finding that a law enforcement officer was untruthful or has demonstrated a lack of candor, regardless of the type or severity of discipline imposed;
 - g. Had a sustained finding that a law enforcement officer has filed a false report or submitted a false certification in any criminal, administrative, employment, financial, or insurance matter in their professional or personal life, regardless of the type or severity of discipline imposed;
 - h. Had a sustained finding that a law enforcement officer intentionally conducted an improper search, seizure, or arrest, regardless of the type or severity of discipline imposed;
 - i. Had a sustained finding that a law enforcement officer intentionally mishandled or destroyed evidence, regardless of the type or severity of discipline imposed;
 - j. Had a sustained finding of domestic violence, as defined in N.J.S.A. 2C:25-19, regardless of the type or severity of discipline imposed;
 - k. Resigned, retired, transferred, or separated from the agency, regardless of the reason, while any internal affairs investigation or complaint was pending, and the misconduct ultimately sustained (as defined in this policy and the current IAPP) falls within categories d through j above or would have resulted in an action under categories a through c had the law enforcement officer not separated from the agency; or

- I. Was charged with any indictable crime under New Jersey or an equivalent offense under federal law or the law of another jurisdiction related to the complaint.

“Sustained finding” refers to any finding where a preponderance of the evidence shows an officer violated any law, regulation, directive, guideline policy or procedures issued by the Attorney General or County Prosecutor; agency protocol; standard operating procedure, rule or training, following the last supervisory review of the incident(s) during the internal affairs process where the deadline for appeal has passed or following a ruling by a hearing officer, arbitrator, Administrative Law Judge, Civil Service Commission, or the Superior Court where the deadline for any subsequent appeal had passed. Allegations that cannot be sustained, are not credible, or have resulted in the exoneration of an employee, including where the previous finding has either been vacated, or overturned on the merits in any subsequent action, generally are not considered to be sustained findings subject to the disclosure requirements of this Policy. On the other hand, if the officer negotiates a plea or there is an administrative or civil settlement with the employer whereby the charge is dismissed, the charge would still be considered sustained, if there was sufficient credible evidence to prove the allegation, and the officer does not challenge the finding and obtain a favorable ruling by a hearing officer, arbitrator, Administrative Law Judge, Civil Service Commission or the Superior Court.

The reporting and public dissemination requirements of (a) through (j) above become applicable once an officer’s discipline is sustained, as defined above. The reporting and public dissemination requirements of (k) and (l) above become applicable at the close of the reporting period during which they occur.

The synopsis of each case, required by this section, shall include the identity of each officer subject to final discipline, a full explanation of the rule, regulation, policy, directive, or law violated, a factual summary of their conduct, and a statement of the sanction imposed. The synopsis shall provide sufficient detail to enable a reader who is not familiar with the case to fully understand the factual scenario that resulted in the disciplinary action. This synopsis shall not contain the identities of the complainants or any victims. Where discipline relates to domestic violence, the synopsis shall not disclose the relationship between a victim and an officer. In rare circumstances, further redactions may be necessary to protect the identity of a victim. Whenever practicable, notice shall be given to victims of domestic violence or sexual violence in advance of an agency’s disclosure of discipline related to the incident.

The required posting to the agency’s website shall remain in place and publicly accessible.

The Hunterdon County Prosecutor’s Office may not, as part of a plea or settlement agreement in an internal affairs investigation or otherwise, enter into any agreement concerning the content of a synopsis subject to public disclosure, including any agreement regarding the identities of employees subject to final discipline, summaries of misconduct, or statements of the sanctions imposed. The agency or employee shall not enter into any non-disclosure agreement which seeks to conceal or

prevent public review of the circumstances under which the employee separated from or was terminated or fired from employment by the agency.

12. The Professional Standards Unit is responsible for administering law enforcement drug testing for all applicants, law enforcement trainees, sworn personnel, and personnel wherein a reasonable suspicion of illegal drug use exists, pursuant to the Law Enforcement Drug Testing SOP.
13. The Professional Standards Unit is responsible for certain agency inspections and audits, pursuant to the Evidence SOP, Cash Accounts LE Equipment SOP, and the Records Access and Security SOP.
14. The Professional Standards Unit is responsible for conducting Brady/Giglio checks pursuant to the Brady/Giglio SOP.

V. ACCEPTING COMPLAINTS

A. Duty of Employees to Self-Report

1. All employees shall immediately self-report the following to the Chief of Detectives through their chain of command:
 - a. Whenever the employee is arrested or criminally charged for any conduct.
 - 1) The report must be made immediately, and in all cases prior to release or leaving the law enforcement agency. In the case of service of criminal charges, the notification must be made immediately upon the receipt of the charges.
 - b. Whenever the employee is named as a party in any civil suit involving their conduct while on duty or otherwise while acting in an official capacity.
 - c. Whenever the employee is named as a party in any civil suit regarding off duty conduct while not acting in an official capacity that alleges racial bias, physical violence, or threats of physical violence by the employee.
 - d. Whenever the employee is either an alleged perpetrator or victim of a domestic violence incident.
2. When employees report this information to a supervisor, the supervisor shall directly and immediately report the information to the Chief of Detectives or designee. The Chief of Detectives or designee shall notify the Professional Standards Unit.

B. Duty of Employees to File an Internal Affairs Report Form for Actions of Other Employees

1. An employee who receives information defined as a reportable incident shall report such information to the Chief of Detectives or his/her designee through the chain of command.

2. All employees must report to the Chief of Detectives or his/her designee through the chain of command any conduct by another employee that reasonably appears to constitute any of the following:
 - a. Prohibited discrimination;
 - b. An unreasonable use of force or a threat of force;
 - c. A constitutional violation;
 - d. Failure to follow required procedures and/or required documentation in instances where a complaint is made, such as failing to complete an Internal Affairs Report form;
 - e. Providing false information in an investigation of an employee for misconduct or in any report, log, or transmittal of information to the communication center.
3. Retaliation against any employee for reporting misconduct shall constitute a serious disciplinary offense and may lead to a severe penalty up to and including termination.

C. Complaints from the Public

1. All agency employees are directed to accept reports of agency or employee misconduct from all persons, including anonymous sources and juveniles, who wish to file a complaint regardless of the hour or day of the week. Complainants are encouraged to submit their complaints as soon after the incident as possible. If the complainant cannot file the report in person, a representative from the Professional Standards Unit shall visit the individual at their home, place of business, or at another location in order to complete the report, if possible. Telephone, e-mail, and facsimile complaints shall also be accepted.
2. If a member of the Professional Standards Unit is immediately available, they shall take the complaint.
 - a. If a member of the Professional Standards Unit is not immediately available, the complainant will be referred to a supervisor.
 - b. In the absence of a supervisor, any sworn employee shall accept the report of employee misconduct.
 - c. In the absence of a sworn employee, any employee shall accept the complaint.
 - d. The employee taking the complaint shall either give the complainant the Internal Affairs Report Form and the Internal Affairs Information Sheet, advise the complainant where to locate the appropriate forms on the website, or take the complaint verbally from the complainant and fill out the Internal Affairs Report Form themselves. Employees shall have the complainant sign the form. However, if the complainant will

not sign the form, the employee shall note this. Complaints shall be immediately forwarded to the Professional Standards Unit.

- e. It is imperative for all employees to understand that a complaint must be accepted by any employee from all persons, including anonymous sources and juveniles, at any time. This includes, in-person, written, and/or telephone complaints. Additionally, failure of a complainant to sign a complaint form will in no way preclude the investigation of the allegations.
3. Sworn agency personnel receiving the complaint shall:
- a. Explain the agency's disciplinary procedures to the complainant.
 - b. Advise the complainant that he or she will be kept informed of the status of the complaint, if requested and its ultimate disposition.

Note: At no time will the employee accepting the complaint make any reference(s) to the truthfulness of the allegation or any consequences for making an untruthful allegation.

4. All agency employees are directed to accept reports of agency or employee misconduct from anonymous sources. All efforts will be made to encourage full cooperation by the complainant.
- a. An employee of the agency who interferes with or delays the reporting or investigation of such complaints may be subjected to disciplinary action.
5. If a complainant wants to make a complaint against an employee of a municipal law enforcement agency and/or another county law enforcement agency, he/she will be referred to that particular agency. If the complaint involves criminal conduct or if the complainant expresses fears or concerns about making the report directly, the Hunterdon County Prosecutor's Office shall take the complaint. Any referral shall be documented appropriately with the Professional Standards Unit.
- a. If a complainant wants to make a complaint against an employee of another law enforcement agency outside of the jurisdiction of Hunterdon County, he/she will be referred to that agency. If the complainant expresses fears or concerns about making the report directly, he/she will be referred to the respective county prosecutor's office.
6. If a complaint against a member of the Hunterdon County Prosecutor's Office is received from another law enforcement agency, the complaint will be forwarded to the Professional Standards Unit.
7. Complaints against the Chief of County Detectives and command staff may originate from a member of the public or from an employee of the agency. All such complaints shall be documented and referred to the Attorney General's Office.

8. In accordance with the Attorney General's Directive No. 2018-6 on immigration issues, no state, county, or local law enforcement officer shall inquire about or investigate the immigration status of any individual making a complaint.

D. Complaints shall be handled as follows:

1. All complaints will be forwarded to the Professional Standards Unit for classification and entry into the record keeping system.
2. Unless otherwise directed by Professional Standards Unit supervisor or the Chief of County Detectives, complaints classified as a performance deficiency shall then be forwarded to the supervisor of the employee for investigation and corrective action.
3. All other complaints classified as misconduct shall be retained by the Professional Standards Unit.
4. Once a complaint has been received, the subject employee shall be notified in writing using the Internal Affairs Complaint Notification Form that a report has been made and that an investigation will commence. This notification form shall not include the name of the complainant. This notification is not necessary if doing so would impede the investigation.

VI. IMMEDIATE SUSPENSIONS

A. Suspension Pending Disposition or Investigation

1. The Chief of Detectives or his/her designee may immediately suspend an employee from duty if it is determined that one of the following conditions exists:
 - a. The employee is unfit for duty; or
 - b. The employee is a hazard to any person if permitted to remain on the job; or
 - c. An immediate suspension is necessary to maintain safety, health, order or effective direction of public services; or
 - d. The employee has been formally charged with a first, second or third degree crime; or
 - e. The employee has been formally charged with a first, second, third or fourth degree crime or a disorderly persons offense while on-duty, or the act touches upon his or her employment.
2. The supervisor imposing the immediate suspension must:
 - a. Advise the employee in writing via an Immediate Suspension Notice of why an immediate suspension is sought and the charges and general evidence in support of the charges.

- 1) If the employee refuses to accept the written notification of immediate suspension, it shall be given to a representative of the employee's collective bargaining unit.
 - b. Provide the employee with a sufficient opportunity to review the charges and the evidence and to respond to either orally or in writing.
 - c. Advise his immediate supervisor in writing of the suspension and the facts and circumstances requiring the suspension.
3. Administrative Reassignment
 - a. Administrative reassignment may be used in cases involving the use of force which results in death or serious bodily injury, unless the employee is suspended or placed on administrative leave pending the outcome of the investigation.
 - b. Administrative reassignment may also be used in certain circumstances where the continued assignment of the subject personnel may be detrimental to the integrity and/or outcome of the investigation.
 - c. The administrative reassignment is subject to change by the Chief of Detectives or designee upon the outcome of the investigation.
4. Filing formal charges
 - a. Within five (5) days of the suspension, the agency must complete and file a Preliminary Notice of Disciplinary Action Form against the suspended employee.

VII. INVESTIGATION

- A. All internal affairs investigations shall be conducted in accordance with the agency's Internal Affairs Investigation written directive.
- B. Criminal Misconduct Complaints
 1. Where preliminary investigative data indicates the possibility of a criminal act on the part of the employee, or the investigation involves an allegation of the excessive use of force, the incident must be immediately reported to the Chief of Detectives. No further action shall be taken, including the filing of charges against the employee, until directed by the Chief of Detectives and/or the Prosecutor.

If the incident involves a member of the executive staff, notification must be made to the Attorney General's Office. No further action shall be taken, including the filing of charges against the employee, until after consultation with and direction from the Office of the New Jersey Attorney General.
 - a. The Chief of County Detectives and Prosecutor shall be immediately notified when an employee is accused of a crime, domestic violence incident whether the employee is either an alleged perpetrator or

victim, any incident that is likely to attract media attention, and any incident that would affect the efficient and effective operation of the agency.

2. The Professional Standards Unit shall interview the complainant, all witnesses as well as review relevant reports and records, and obtain other relevant information and materials. Allegations of crimes shall be documented on the Executive Summary Form and reviewed by the First Assistant Prosecutor prior to any investigation. The First Assistant Prosecutor will determine if the investigation remains as a criminal investigation or if the Prosecutor's Office will decline criminal prosecution at that time. In either instance, the First Assistant Prosecutor shall sign the IA Review Form, advising whether the investigation will proceed as a criminal investigation or an administrative investigation. The IA Review Form shall be provided to the principal prior to any interview.
 - a. A principal shall not be compelled to answer any questions in the absence of a grant of use immunity as conferred by the First Assistant Prosecutor.
 - b. The Professional Standards Unit investigator shall consult with the Prosecutor and the Chief of County Detectives regarding the advisability of giving a Miranda Warning Form to the principal.

C. Administrative Misconduct Complaints

1. When preliminary investigative data indicates an administrative misconduct offense, which may result in disciplinary action:
 - a. A supervisor must notify the Chief of Detectives or designee. The Chief shall notify the Professional Standards Unit, who will conduct a full investigation of the matter.
 - b. In circumstances where the Professional Standards Unit is notified first, the Professional Standards Unit will notify the Chief of Detectives.
 - c. The Professional Standards Unit will forward the completed investigation, with their findings, to the Captain and Chief of Detectives for review.
 - d. The Chief of Detectives, upon approval of the findings, shall determine and implement discipline.

D. Performance Deficiency Complaints

1. Minor complaints may be classified as performance deficiencies. When a complaint has been classified as a performance deficiency, the complaint shall be forwarded to the employee's commanding officer, one step removed from the employee's immediate supervisor. The commanding officer shall then prepare a report summarizing the matter and recommending the appropriate action and submit the report to the Chief of Detectives.

2. Once approved, the report shall be forwarded to the employee's immediate supervisor to implement the appropriate corrective action. The Performance Notice shall be completed by the immediate supervisor or the commanding officer. The employee shall be advised of the corrective action by the issuing supervisor. The employee shall sign the Performance Notice and be given a copy of the document.
3. The supervisor or commanding officer shall forward the completed investigation report and a copy of the signed Performance Notice to the Professional Standards Bureau. The Professional Standards Unit will enter it into IA Pro as a performance issue resolved. The original Performance Notice shall be placed in the employee's personnel file and later be removed in accordance with the current collective bargaining agreement.

E. Interview Procedures

1. Preparation

- a. All principals, complainants, and witnesses shall be interviewed after careful preparation, including the review of the investigative file and all documents, evidence, and interviews conducted up until the interview. The investigator should have prepared questions but also be prepared to ask follow-up questions and address any additional information that the interviewee poses.

2. Memorializing of the Interview

- a. The interview of the complainant, principal, and any other witness with critical information shall be documented or memorialized in one of the following ways:
 - 1) A video-recorded statement is the preferred method. In certain circumstances, it may not be possible to conduct a video-recorded interview and therefore, an audio-recorded interview shall be conducted. A synopsis of the interviews will be included in the Investigation Report(s).
 - 2) Any written statements provided to the investigator shall be included in the file. Investigators shall make all attempts to follow-up with a recorded interview.
- b. Investigators must, at all times, remain cognizant that civilian witnesses who are not employees of the agency cannot be compelled to provide a statement in any manner. However, all reasonable efforts should be made to obtain a statement when warranted from civilian witnesses.
- c. A copy of the recording of the interview shall be made available to the employee at the appropriate stage of a criminal or disciplinary proceeding. If the subject employee wishes to record the interview, he/she may do so, and a copy of the recording shall be made available to the Hunterdon County Prosecutor's Office upon request, at the agency's expense. Subject employees wishing to record the

interview must inform the internal affairs investigator(s) prior to doing so.

- d. Both written statements and recorded statements shall be made attachments within the investigative file. Recorded statements shall be burned onto a DVD/CD or a thumb drive and placed as an attachment into the file. If the matter is criminal, the original statements are considered evidence and shall be handled in accordance with agency policy regarding the handling of evidence. A copy shall be placed into the case file.

3. Representation in Administrative Internal Affairs Investigations

- a. During the course of the administrative interview, an employee may be represented by a union representative of their choosing to include an attorney, so long as the availability of the representative does not in any way hamper or impede the on-going investigation. There is not a Sixth Amendment right in administrative internal affairs investigations for principals and witnesses. If it appears that the employee's union representative may become a witness or principal in the investigation, the union representative shall be prohibited from attending the interview.
- b. Complainants and witnesses who are not employees of the department cannot be precluded from having a legal representative present while being interviewed by investigators.

4. Interview of Complainants and Civilian Witnesses

- a. It is preferred that a complainant or civilian witness be interviewed in person. Interviews shall be conducted formally, following a formal statement structure. If a civilian witness is unable or unwilling to make a statement in person, the investigator shall conduct a recorded telephone interview and document on the recording that the telephone interview was agreed upon.
- b. The investigator shall arrange a convenient time and place, including by telephone (or TDD), to interview complainant and civilians. Telephonic interviews shall be recorded unless the individual objects to the recording. The investigator shall reasonably accommodate an individual's circumstances to facilitate the progress of an investigation. This may include holding an interview at a location other than the agency or at a time other than regular business hours.
- c. All relevant identifying information concerning complainants and civilian witnesses should be recorded, to include name (unless the complainant wishes to remain anonymous), address, telephone number(s), race/ethnic identity, sex, date of birth, place of employment, and if necessary, social security number.
- d. Investigators must treat the person being interviewed with dignity and respect and demonstrate interest and concern in dealing with

the complainant. Complainants and witnesses shall not be questioned about any matters that are not directly relevant to the allegations of the investigation.

e. Complainants and civilian witnesses should be interviewed outside the presence of other complainants and civilian witnesses. Group interviews are not permitted. A parent, or adult relative or guardian in the absence of a parent, shall be present during the interview of a minor. In the event, a parent cannot be located; the investigator must document the efforts taken to contact same. If a civilian insists that another potential witness be present during an interview, the interview must continue with the potential witness present, and the report must note the circumstances.

f. Structure of Interview

1) Complainants should initially be asked to explain in their own words, in detail, the facts forming the basis of the complaint. If necessary, the investigator should then clarify with the complainant, any questions, issues, and/or discrepancies that the investigator identifies in the narrative of the Internal Affairs Report Form, recorded phone complaint, or correspondence from the complainant.

2) The complainant should be asked to identify any witnesses and state what they believe the witness may have knowledge of; turn over any evidence in their possession; and identify what other types of evidence they might be aware of.

3) The complainant and or witnesses have no automatic right to view any agency video recordings. It shall be up to the discretion of the investigator, whether utilizing any agency video recordings during an interview will enhance or clarify the investigative process.

4) If a complainant or civilian witness refuses to be interviewed, or cannot be located or contacted, a letter should be immediately forwarded on agency letterhead, via certified mail, authorized and signed by the investigator, advising that he/she should respond within ten (10) days, or the investigation will proceed without his/her input.

5. Interview of Members of the Agency

a. Generally, the interview of the principal and employee witness(es) is accomplished after the complainant and all non-employee witnesses are interviewed. However, this is determined by the character of the inquiry and remains a choice of the investigator. Such interviews are a critical step in the investigation and should be carefully planned. Investigators shall not accept a written statement from any employee in lieu of an interview.

b. Employee interviews shall be conducted formally, following a formal statement structure.

c. Employees as: **WITNESSES**

- 1) A formal recorded statement shall be taken from employee witnesses. The statement shall be summarized in the Investigation Report. A sworn member who is considered a witness is entitled to union representation if he/she reasonably believes that he/she may be subject to disciplinary action as a result of either what they will disclose in their interview or in the investigation.
- 2) Advise the employee that he/she is a witness, explaining the difference between a witness and principal.
 - a) A witness is a person reasonably believed to have information concerning the event under investigation, but whose own conduct is not the focus of the investigation.
 - b) A principal is a person whose conduct is the focus of the investigation.
- 3) Before any questioning takes place, the member shall be apprised of the identity of the investigator conducting the interview, including his/her rank, name, and assignment. This notice shall also include the identity of all persons present during the interview.
- 4) A formal recorded statement will be obtained from the witness after he/she has been given their Witness Acknowledgment Form. The investigator shall further verbally confirm the member's obligation for candor throughout an internal investigation, pointing out the specific provision of the acknowledgment form denoting such. A candor statement shall be read prior to the interview.
- 5) If, during the interview, the status of an employee shifts from a witness to a principal, the employee shall be advised accordingly. The investigator shall complete a Principal Administrative Investigations Advisement Form and provide it to the employee. A copy of the completed form shall be included as an attachment to the investigation. If during the interview, it appears that the employee may be involved in criminal wrongdoing, the interview must stop, and the investigator shall confer with the First Assistant Prosecutor prior to proceeding any further.

d. Employee as: **PRINCIPAL**

- 1) Each employee of the agency is required to answer pertinent questions regarding the matter which is the subject of investigation. All employees of the agency are obligated to answer questions and provide full and complete information to the investigator(s) during internal investigations. Less than

complete candor during any statement may lead to serious disciplinary sanctions, which may include suspension or termination.

- 2) Principals shall be advised of the general nature of the complaint, the time period involved, any allegation(s) or violation(s) of rules, regulations, and order involved.
- 3) The principal may produce records of his/her own or suggest names of witnesses he/she requests to be interviewed.
- 4) The recording of the statement shall begin prior to presenting the principal with the Principal Administrative Investigation Acknowledgement Form and if applicable, the IA Review Form (declination). The review of and signing of any forms shall be recorded.
- 5) The following guidelines will be followed when union representation (Weingarten Representative) is requested.
 - a) Any employee designated as a principal or witness, who reasonably believes that the investigation may result in disciplinary action against him/her, is entitled, upon request of the interviewee, to have a union representative accompany the interviewee to the interview.
 - b) Any employee who is a potential principal or witness in the investigation may not act as a Weingarten representative.
 - c) The exercise of the interviewee's right to union representation may not interfere with or cause undue delay with the investigation. However, a reasonable period of time should be allowed for the representative to appear for the interview.
 - d) Although an interviewee is entitled to the representative of his/her choosing, any union representative or other person designated by the union will satisfy the representation requirement. For additional guidance on interviewee representation, refer to the current version of the NJ Attorney General's IAPP.
 - e) The principal and his/her representative shall be informed of the subject matter of the investigation and given a reasonable period of time to confer prior to the interview. The representative shall be advised of the obligation of confidentiality and the requirement not to discuss any information obtained during an interview with any other person. In this case, the Weingarten Representative Acknowledgment Form shall be used.

The union representative may be present during the interview, and once the interview has begun, they may not leave the room for purposes of further consultation.

- f) If the principal refuses to make a statement or answer any questions, he/she will be informed that such refusal may result in discipline/dismissal and the interview shall be terminated.
 - g) The representative is not permitted to interfere with the interview or answer any of the questions on behalf of the principal. The representative may seek clarification regarding a question that has been asked and the representative believes may have been misinterpreted.
- 6) The interview shall be conducted at a reasonable hour in a non-coercive manner, without threat or promise of reward, and preferably, when the employee is on duty. No “off the record” questions will be asked and no “off the record” statements will be permitted.
 - 7) The interview generally should be conducted at the Office of Professional Standards, however in certain circumstances it may not be feasible. Interviews shall video recorded, unless it is not feasible, in which case the interview shall be audio recorded.
 - 8) The questioning must be of a reasonable duration, considering the subject matter’s complexity and gravity. The employee must be allowed time to attend to personal physical necessities. In the event an interview is significantly protracted accommodations for a meal or meal break will be accommodated.
 - 9) If at any time during the questioning session the employee becomes a suspect in a criminal act, the employee shall be so informed, and the questioning shall pause. No further action shall be taken, including the filing of charges against the employee, until directed by the Chief of Detectives and/or the Prosecutor. If the incident involves a member of the executive staff, notification must be made to the Attorney General’s Office. No further action shall be taken, including the filing of charges against the employee, until after consultation with and direction from the Office of the New Jersey Attorney General.

F. Investigative Avenues

1. Physical Evidence

- a. Investigators should obtain all relevant physical evidence. All evidence, such as fingerprints, clothing, hair or fabric fibers, bodily

fluids, stains, and weapons should be handled according to established evidence procedures.

- b. With respect to radio and telephone recordings, the original recording is the best evidence and should be secured at the outset of the investigation. Transcripts or copies of the original recordings can be used as investigative leads. Entire tapes or transmissions should be reviewed to reveal the totality of the circumstances.

2. Photographs

- a. Photographs and video recordings can be useful tools if relevant to the investigation. If a complaint involves excessive use of force, photographs of the complainant and the officer should be taken as close as possible to the time of the incident. Photographs also can be used to create a record of any other matter the investigator believes is necessary.
- b. Recent photographs of all agency employees should be maintained. These can be used if a photo array is needed for identification purposes. The photo display must be conducted in accordance with the New Jersey Attorney General's Guidelines and retained for possible evidentiary purposes.

3. Physical Tests

- a. Principals may be compelled to submit to various physical tests or procedures to gather evidence.
- b. "No person has the privilege to refuse to submit to for the purpose of discovering or recording his corporal features and other identifying characteristics or his physical or mental condition." N.J.R.E 503(a). Evidence that may be obtained or procedures that may be used to obtain evidence under this rule include:
 - 1) Breath sample;
 - 2) Blood sample;
 - 3) Buccal Swabs;
 - 4) Requiring employee to speak;
 - 5) Voice recordings;
 - 6) Participation in a suspect lineup;
 - 7) Handwriting samples;
 - 8) Hair and saliva samples;
 - 9) Urine specimens;

10) Videotaping; and

11) Field sobriety tests

- c. For internal investigations that may result in a criminal prosecution, physical tests should be conducted pursuant to a court order or an investigative detention under Rule 3:5A. Principals that refuse to perform or participate in a court-ordered physical test may be subject to a contempt of court sanction and agency discipline for failing to comply with the order.
- d. For internal investigations that may result in an administrative disciplinary proceeding, the investigator or the appropriate supervisor may order the principal to perform or participate in a physical test. The order must be reasonable and relevant to the investigation. Principals that refuse to perform or participate in a lawfully ordered physical test can be disciplined for their refusal.

4. Polygraph

- a. While an employee who is the subject of an internal affairs investigation may voluntarily request a polygraph examination, an employer shall not influence, request, or require an employee to take or submit to a polygraph examination as a condition of employment or continued employment (N.J.S.A. 2C:40A-1). Therefore, a principal should never be asked to take a polygraph examination as part of an internal affairs investigation.
- b. An employee cannot be required to submit to a polygraph test on pain of dismissal. Engel v Township of Woodbridge, 124 N.J. Super. 307 (App. Div. 1973).
- c. Polygraph tests of civilian complainants and witnesses should only be used when a reasonable suspicion exists that their statements are false. Polygraph examinations should not be routinely used in internal affairs investigations and should not be used to discourage or dissuade complainants. Victims of sexual assault cannot be asked or required to submit to a polygraph examination.

5. Search and Seizure

- a. During either administrative or criminal investigations, workplace areas may generally be searched without a warrant. The issue whether the employee has a reasonable expectation of privacy in the area or property the investigator wants to be searched should be determined on a case-by-case basis. Investigators should seek legal advice before proceeding with any search.
- b. In a criminal investigation, a search warrant should be obtained before a search is conducted of an employee's personal property, including any home, personal car, bank accounts, personal bags, purses, etc. A search warrant also may be necessary where a search of the employee's workplace is conducted in an area where the employee has a high expectation of privacy.

- c. In an administrative investigation, a search warrant is generally not required, however the investigator should exercise great care when searching property or items in which the employee has a high expectation of privacy. Investigators should document their reasons for conducting the search and limit its intrusiveness. If any doubt or concern exists about the propriety or legality of a search, the investigator should seek legal advice from the First Assistant Prosecutor before proceeding with the search.
- d. Employees may provide voluntary consent to a search. If a consent search is to be conducted, the investigator shall follow standard law enforcement procedures and have the employee sign a consent to search form after being advised of the right to refuse such search.
- e. Any search conducted by an investigator during either a criminal or administrative investigation, should be conducted in the presence of the employee and an independent witness.

VIII. REPORTING

- A. Upon completion of all possible avenues of inquiry, the Professional Standards Unit investigator shall complete the following reports:
 - 1. The internal investigation will be memorialized on the reports as are hereinafter identified. The investigation reports and all attachments shall be part of the IA file. The entire file shall be forwarded to the division Captain and then the Chief of Detectives upon completion.
 - 2. The completed report will be submitted in a case file. The investigator will include the Internal Investigation Attachment Log, followed by the Internal Affairs Report Form, the Investigation Report, and the remaining attachments, numbered sequentially.
 - 3. The Internal Investigation Summary and Conclusions Form will be attached to the report folder on the left side.
- B. Report Flow
 - 1. The investigation should be completed, and all reports prepared within enough time to allow for the filing of disciplinary charges, (if applicable) in accordance with the "45-day rule". Authorization for additional time to complete investigations must be received from the division Captain and/or the Chief of Detectives, in accordance with the investigation extension procedure.

Figure #2: Timing of Internal Affairs Investigations

Length of investigation from receipt of complaint	Special notice required
1 to 44 days (“Routine”)	None. Case resolved in the ordinary course
45 days (“More complex”)	Law enforcement executive
90 days	Law enforcement executive
135 days	Law enforcement executive
190 days (“Rare cases”)	County Prosecutor Law enforcement executive
225 days	Law enforcement executive
270 days	County Prosecutor Law enforcement executive

2. Investigators are responsible for keeping internal affairs investigations assigned to them up-to-date and are likewise responsible for routinely advising the division Captain and Chief of Detectives of the status of their assigned investigations.
3. The investigator shall forward the completed investigation to the Professional Standards Unit supervisor. If there are voluminous reports, the investigator may forward them to the supervisor as the investigation progresses.
4. The division Captain and the Chief of Detectives will review the completed investigation and findings. The Chief of Detectives will make the final determination or return for further investigation. Each reviewer, whether it is the Professional Standards Unit supervisor, the division Captain, and/or the Chief of Detectives shall complete a Supervisor Review Form to indicate whether they concur or not concur with the findings. Each page of the Internal Affairs Investigations Report and the Summary and Conclusions shall be signed off on by each reviewer.
5. Once the Chief of Detectives is provided with “sufficient information” to file a charge, the Chief of Detectives has forty-five (45) days to do so (Ref. NJSA 40A:14-147).
6. After a final determination is reached in an internal investigation, the employee(s) involved as a principal(s) and the complainant(s) shall be notified in writing by the Professional Standards Unit supervisor and/or Chief of Detectives of that determination.
7. If discipline is imposed, a record of such discipline, not including the investigation report or attachments, shall be placed in the employee’s personnel file.

C. Internal Affairs Report

1. The Internal Affairs Investigation Report.

a. Within ten (10) calendar days of being assigned to conduct an internal investigation, the case investigator shall document on the Internal Affairs Investigation Report Front Page:

i. Documentation that the complainant has been contacted by the investigator to advise them of their assignment as the case investigator and to arrange a meeting to conduct an interview. If the investigator is unable to contact the complainant, a “ten day” letter must be sent to the complainant via certified mail and documented in the investigation report.

ii. Documentation that the case investigator has contacted the principal(s) and informed them of the nature of the complaint against them, unless doing so would compromise the investigation.

2. The Internal Affairs Investigation Report-Continuation

a. This report will be an objective recounting of all the relevant information the investigation disclosed, including statements, documents, and other evidence. It shall be a complete account of the investigation.

D. Internal Affairs Attachment Log

1. The Internal Affairs Investigation Attachment Log will account for all attachments accumulated during the investigation.

2. A separate log number will be assigned to every attachment, unless the attachment is a multiple page document, at which time it will be secured as a singular attachment.

3. Each attachment should be entered into the case file appropriately and chronologically as mentioned in the investigation report. Attachments will receive a separate log number and be appropriately cross-referenced in chronological order.

E. Internal Affairs Investigation Summary and Conclusion Report

1. At the conclusion of the investigation, the investigator will prepare an Internal Affairs Investigation Summary and Conclusion Report. This report shall summarize the case and provide conclusions of fact for each allegation. The report should be organized as follows:

a. A *Summary of Allegations* against the principal(s), including a recitation of the allegations;

b. A *Summary of Factual Findings* in which the investigator outlines the facts proven or supported by the evidence reviewed during the investigation and applies those facts to each allegation. This shall include

a conclusive finding on whether each allegation is to be recorded as exonerated, sustained, not sustained, or unfounded. For sustained findings that qualify for disclosure (see below), the summary of factual findings, along with the discipline imposed, should be the basis for the required brief synopsis.

- c. A *Discipline Imposed* section is where the final discipline imposed on the principal will be recorded. This section will be completed once the discipline imposed becomes final.
2. If the conduct of a principal was found to be improper, the report must cite the agency rule, regulation, or SOP violated. Any aggravating or mitigating circumstances surrounding the situation, such as unclear or poorly drafted agency policy, inadequate training or lack of proper supervision, shall also be noted in the form.
 3. If the investigation reveals evidence of misconduct not based on the original complaint, this must also be memorialized in both the *Investigation Report* and the *Summary and Conclusions Report*. An investigation concerning secondary misconduct may be a continuation of the original investigation, or in some circumstances, the secondary misconduct may warrant a separate investigation. The nature of the secondary misconduct and how it relates to the original investigation and complaint will be considered in making this determination.
 4. The conclusion reached by the investigator, based upon the facts developed in his/her investigation, will fall into one of the following four (4) dispositions.
 - a. Sustained - A preponderance of the evidence shows an officer violated any law; regulation; directive, guideline, policy, or procedure issued by the Attorney General or County Prosecutor; agency protocol; standard operating procedure; rule; or training.
 - b. Unfounded - A preponderance of the evidence shows that the alleged conduct did not occur (For example, at the conclusion of an investigation into an excessive force allegation, the agency finds that the officer did have an interaction with the complainant, but did not use any force (alleged conduct));
 - c. Exonerated - A preponderance of the evidence shows the alleged conduct did occur but did not violate any law; regulation; directive, guideline, policy, or procedure issued by the Attorney General or County Prosecutor; agency protocol; standard operating procedure; rule; or training. (For example, at the conclusion of an investigation into an excessive force allegation, the agency finds that the officer used force (alleged conduct) but that the force was proper and justified (alleged violation).);
 - d. Not Sustained - The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation.

F. Request for Extension of Investigation

1. Exceptions to the forty-five (45) calendar day requirement to complete all internal investigations may be granted only in the following cases:
 - a. The investigation is pending criminal prosecution.
 - b. The investigation is undergoing a prosecutorial review to determine if the matter will be prosecuted criminally.
 2. If investigators are unable to complete an internal affairs investigation within forty-five (45) day of receiving a complaint, they must notify the Chief of Detectives on or about the 45th day. In such situations, the Chief of Detectives should seek to identify the reasons for the extended investigation and whether the Professional Standards Unit requires additional resources or oversight to complete the inquiry in a prompt manner.
 - a. In addition, the Chief of Detectives should ensure compliance with the “45-day rule” established by N.J.S.A. 40A:14-147.
 3. Investigators are required to provide further notice to the Chief of Detectives every additional 45 days that the internal affairs investigation remains open (*i.e.*, on or about the 90th, 135th, and 180th days from the receipt of the complaint), and the Chief of Detectives should exercise increasing scrutiny of the investigators’ work the longer the case remains open.
- G. Written or Oral Reprimand Form (verbal/written reprimand): is the form that must be completed by a supervisor to address the disciplinary action initiated as a result of administrative misconduct.
1. A Written or Oral Reprimand Form shall be used when the misconduct warrants a disciplinary action of a verbal or written reprimand.
 2. The supervisor recommending the issuance of a Written or Oral Reprimand Form shall complete and forward the unsigned copy to the division Captain and/or Chief of Detectives and the Professional Standards Unit Supervisor for review and approval.
 3. Upon approval, the Written or Oral Reprimand Form will be returned to the principal’s supervisor for signature and service.
 4. The employee shall be advised of the disciplinary action by the issuing supervisor. The employee shall sign the Written or Oral Reprimand Form and be given a copy of the document. The original document shall be placed in the employee’s personnel file in accordance with the current collective bargaining agreements and a copy forwarded to the Professional Standards Unit Supervisor for filing.
- H. Notice of Disciplinary Action - Formal Charge:
1. A Preliminary Notice of Disciplinary Action Form shall be used when it is determined that formal charges are preferred, and the proposed discipline exceeds a written reprimand. The Chief of Detectives or designee shall, in conjunction with the Professional Standards Unit, prepare the PNDA, sign, and serve charges upon the principal.

2. The Preliminary Notice of Disciplinary Action Form shall direct that the employee charged must enter a plea of guilty or not guilty, in writing, on or before the date set forth in the notice for entry of a plea. The date will be listed on the notice and must provide a reasonable time, at least five (5) days after the date of service of the charges to enter a plea and request a hearing, if applicable.
 3. Conclusion of fact and the penalty imposed will be noted in the employee's personnel file after he or she has been given an opportunity to read and sign it. Professional Standards Unit will cause the penalty to be carried out and complete all required forms.
- I. If the employee charged waives a hearing and enters a plea of guilty, the Chief of Detectives shall permit the employee to present factors in mitigation prior to assessing the final penalty.

IX. HEARINGS

- A. Upon written notice of a request for a hearing from the principal, the Prosecutor will set the date for the hearing, no sooner than ten (10) days and no more than thirty (30) days and arrange for the hearing of the charges. If the County hires a special counsel to act as the hearing officer, the special counsel will set the date and time.
- B. Internal Affairs shall be responsible to assist the assigned supervisor or prosecutor in the preparation of the agency's prosecution of the charges. This includes proper notification of all witnesses and preparing all documentary and physical evidence for presentation at the hearing.
- C. In the event of a hearing, the Internal Affairs Supervisor will be responsible for preparing a discovery package from the Internal Affairs file and providing it to the principal or his or her representative.
- D. The hearing shall be held before the appropriate authority or the appropriate authority's designee. In accordance with N.J.S.A. 40A:14-148, except as otherwise provided by law, the hearing officer, board, or authority empowered to hear and determine the charge or charges made against an employee of the agency, shall have the power to subpoena witnesses and documentary evidence. The Superior Court shall have jurisdiction to enforce any such subpoena.
- E. All disciplinary hearings shall be closed to the public unless the defendant employee requests an open hearing. The agency reserves the right to petition the hearing officer to conduct a closed hearing if a legitimate reason exists for such a request.
- F. The hearing authority shall recommend a disposition of the charges, including modifying the charges in any manner deemed appropriate. The decision of the hearing authority must be in writing and should be accompanied by findings of fact for each issue in the case.
- G. A copy of the decision or order and accompanying findings and conclusions shall be delivered to the employee who was the subject of the hearing and to the Chief of County Detectives and Prosecutor if the Prosecutor was not the hearing authority.
- H. Upon completion of the hearing, Internal Affairs will complete all required forms including the entry of the disposition in the Internal Affairs record keeping system.

- I. If the charges were sustained, the Professional Standards Unit will cause the penalty to be carried out.

X. CONFIDENTIALITY

- A. The nature and source of internal allegations, the progress of internal affairs investigations and the resulting materials are confidential information and remain exempt from access under the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1.1 to -13. The contents of an internal investigation case file, including the original complaint, shall be retained in the internal affairs function, and clearly marked as confidential. The information and records of an internal investigation shall only be released or shared under the following limited circumstances:
 1. If administrative charges have been brought against an employee and a hearing will be held, a copy of all discoverable materials shall be provided to the employee and the hearing officer before the hearing;
 2. If the principal, agency, or governing jurisdiction has been named as a defendant in a lawsuit arising out of the specific incident covered by an internal investigation, a copy of the internal investigation reports may be released to the attorney representing the principal, agency, or jurisdiction;
 3. Upon request or at the direction of the Prosecutor or New Jersey Attorney General;
 4. Upon a court order; or
 5. Upon a request from the Division of Pensions, following an officer's application for a retirement allowance.
- B. The Chief of Detectives may authorize access to a particular file or record for good cause. The request and the authorization shall be in writing, and the written authorization shall specify who is being granted access, to which records access is being granted, and for what time period access is permitted. The authorization shall also specify any conditions (i.e., the files may be reviewed only at the internal affairs office and may not be removed). In addition, the law enforcement executive may order any redactions in accordance with the current IAPP. The Chief of Detectives should grant such access sparingly, given the purpose of the internal affairs process and the nature of many of the allegations against officers. As a general matter, a request for internal investigation case files may satisfy the good cause requirement:
 1. If a Civilian Review Board that meets certain minimum requirements requests access to a completed or closed investigation file, subject to the conditions described in this section; or
 2. If another law enforcement agency requests the files because it is considering hiring an officer who was formerly employed at the agency with the internal investigation files.
- C. The Hunterdon County Prosecutor's Office may receive law enforcement or judicially sanctioned subpoenas directing the production of internal affairs investigative records. Before responding to the subpoena, the Chief of Detectives

and/or the Professional Standards Unit supervisor should consult with the First Assistant Prosecutor to determine whether the subpoena is valid and reasonable. Courts may modify or quash invalid or unreasonable subpoenas but will require the HCPO to file an appropriate motion. Similar considerations may provide grounds for opposing a records request from a Civilian Review Board that otherwise satisfies the minimum requirements. The Chief of Detectives and/or the Professional Standards Unit supervisor should consult with the First Assistant Prosecutor to provide notice to any individual who is referenced in records requested by a Civilian Review Board.

- D. The Summary and Conclusions Report shall be released in response to a request made under the common law right of access by any member of the public or press where it satisfies any of the following conditions:
1. The Summary and Conclusions Report led to a result on or after January 1, 2023, that requires disclosure pursuant the current IAPP;
 2. The agency otherwise concludes that the Summary and Conclusions Report is subject to release pursuant to applicable law or court order; or
 3. Upon the request or at the direction of the County Prosecutor or Attorney General at any time.
- E. When an agency concludes that a Summary and Conclusions Report is subject to disclosure, it shall redact the following before disclosure:
1. The names of complainants, witnesses, informants, victims, and cooperators, in addition to information that could reasonably lead to discovery of their identities;
 - a. In instances of domestic violence, in addition to redaction of the victim's name, all reference to the specific nature of the qualifying relationship should also be redacted to protect the identity of the victim. For example, if the victim is an intimate partner, terms such as "spouse," "partner," "girlfriend," "boyfriend," "husband," or "wife," should also be redacted, and to the extent possible the report should just indicate that the relationship between the victim and the officer was an enumerated relationship under the Domestic Violence Act (*N.J.S.A. 2C:25-17 et seq.*).
 2. Non-public, personal identifying information about any individual named in the report, such as their home addresses, phone numbers, dates of birth, social security numbers, familial relationships, etc.;
 3. Medical information or history, including but not limited to, mental health or substance abuse services and drug or alcohol evaluation, counseling, or treatment;
 4. Information regarding any criminal investigation or prosecution that is not already contained in a public filing, or any information that would impede or interfere with a pending criminal or disciplinary proceeding;
 5. Any records or material prohibited from disclosure by law;

6. Juvenile records;
 7. Any information which is the subject of a judicial order compelling confidentiality;
 8. Any other information that would violate a person's reasonable expectation of privacy; and
 9. Any information regarding law enforcement personnel, procedures, or resources that could create a risk to the safety of any person, including but not limited to law enforcement personnel.
- F. Whenever a law enforcement officer makes an application to the New Jersey Division of Pensions for retirement benefits, in anticipation of upcoming retirement and the receipt of a pension, both the department and the officer shall have an affirmative obligation to report to the Division of Pensions the existence of any pending internal affairs investigation, complaint or case, including those on appeal, as well as any criminal charges.
- G. Agencies may receive subpoenas directing the production of internal affairs investigative records. Before responding to the subpoena, the Chief of Detectives should consult with the Prosecutor to determine whether the subpoena is valid.
- H. If the release of internal affairs documents is appropriate, the agency should inventory the reports they are releasing and obtain a signed receipt.

XI. INTERNAL AFFAIRS FILES

- A. A separate internal affairs file system shall be maintained in a secured file cabinet. Personnel records are separate and distinct from internal affairs records. Internal affairs investigation reports shall not be placed in an employee's personnel records file.
1. Where a complaint is sustained and discipline imposed, the only items to be placed into the employee's personnel file are a copy of the administrative charging form and a copy of the disposition form.
 2. For all other dispositions there will be no entry or documentation regarding the complaint or investigation in the employee's personnel file.
- B. Selection and Hiring
1. In addition to the requirements of the selection process, background investigations must include a review of the prior internal affairs files of any law enforcement candidate.
 2. If the Hunterdon County Prosecutor's Office has reason to believe that a candidate for employment was previously a sworn officer of another law enforcement agency, the Office has an affirmative obligation to identify all such former employers. The Hunterdon County Prosecutor's Office shall then request all internal affairs files for cases where the candidate was the principal, regardless of the ultimate disposition or status of the complaint.

- a. If requested, the Hunterdon County Prosecutor's Office shall provide a written acknowledgement to the releasing agency that it will maintain the confidentiality of said files in accordance with this policy.
 3. If the Hunterdon County Prosecutor's Office receives such a request regarding a former employee, the Professional Standards Unit shall have the requesting agency complete the Acknowledgment of Confidentiality of Internal Affairs and Personnel Records to Requesting Agency form. The Professional Standards then shall share copies of all internal investigative information related to that candidate with the hiring agency, in accordance with N.J.S.A. 52:17B-247. Confidential internal affairs files shall not be disclosed to any other party.
 4. The Prosecutor and/or the Chief of Detectives retains the authority to defer a decision on hiring a particular candidate until all extant internal affairs information has been received and reviewed.
- C. Investigative records created during an internal affairs Investigation are included in the "Records Retention and Disposition Schedule for County Agencies" and shall be maintained as such. The agency may choose to retain the files longer and exceed the retention schedule.

All previously approved policies and procedures of the Hunterdon County Prosecutor's Office which conflict with this order are hereby rescinded.