

Bernardsville Police Department

VOLUME: STANDARD OPERATIONS PROCEDURES	EFFECTIVE DATE: 08 01 2006	REVISION DATE 12 05 2014	PAGE # All	SECTION	APPROVED	VOLUME SOP
STANDARD(S):	# PAGES 12	07 02 2018	4	III,B,5	Lt. JR	CHAPTER III
			6	III,E,13	Lt JR	
SUBJECT: Internal Affairs Policy and Procedures	REFERENCES:		Attach List #s 24, 24 ,26		Lt JR	SECTION 20
ISSUING AUTHORITY/CHIEF OF POLICE Chief Kevin J Valentine						SUB. SECTION
ATTORNEY GENERAL, PROSECUTORS OFFICE REFERENCE: NJAG Internal Affairs Policies and Procedures Rev Nov 2017 SCPO Gen Order 2012-2 NJAG LE Directive 2017-2						
APPENDIXES ATTACHED: Appendix A SCPO GO 2012-2 Appendix B NJAG Citizen Complaint Intake Checklist Appendix 1-26 (IA Forms)						
APPLICABILITY: All Personnel						

I. Purpose

The purpose of this policy is to provide direction and procedures for employees of the Bernardsville Police Department to use in implementing guidelines issued by the New Jersey Attorney General and the Somerset County Prosecutor regarding Internal Affairs investigations.

The Bernardsville Police Department is committed to providing law enforcement services that are fair, effective, and impartially applied. Toward that end, officers are held to the highest standards of official conduct and are expected to respect the rights of all citizens. Officers' adherence to these standards, motivated by a moral and professional obligation to perform their job to the best of their ability, is the ultimate objective of this agency.

The effectiveness of a law enforcement agency is dependent upon public approval and acceptance of law enforcement authority. The department must be responsive to the community by providing formal procedures for the processing of complaints from the public regarding individual officer performance.

Furthermore, is also the purpose of this policy is to improve the quality of law enforcement services. Citizen confidence in the integrity of the law enforcement agency increases through the establishment of meaningful and effective complaint procedures. This confidence engenders community support for the law enforcement agency. Improving the relationship between the officers and the citizens they serve facilitates cooperation vital to the department's ability to achieve its goals. An effective disciplinary framework also permits law enforcement officials to monitor officers' compliance with department policies and procedures. Adherence to established

managers to identify problem areas requiring increased training or direction. Finally, this policy will ensure fairness and due process protection to citizens and officers alike.

The internal affairs process shall also be used to identify and correct unclear or inappropriate agency procedures. In addition it will highlight organizational conditions that may contribute to any misconduct, such as poor recruitment and selection procedures or inadequate training and supervision of officers.

II. Policy

It is the policy of the Bernardsville Police Department to accept and investigate all complaints of alleged officer misconduct or wrongdoing from any citizen or agency employee. Following a thorough and impartial examination of the available factual information, the officer shall be either exonerated or held responsible for the alleged misconduct. Discipline shall be administered according to the degree of misconduct.

It is the policy of this department that officers and employees, regardless of rank, shall be subject to disciplinary action for violating their oath and trust. Committing an offense punishable under the laws of the United States, the State of New Jersey, or municipal ordinances constitutes a violation of that oath and trust. Officers are also subject to disciplinary action for failure, either willfully or through negligence or incompetence, to perform the duties of their rank or assignment. In addition, officers may be disciplined for violation of any rule and regulation of the department 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.

It is the policy of this department that officers conducting the investigation of any allegation of misconduct must strive to conduct a thorough and objective investigation without violating the rights of the subject officer or any other law enforcement officer, and show proper respect to all members of the public. Accordingly, all supervisors and any other officer who may be called upon to do an internal investigation must be thoroughly familiar with the department's internal affairs policy.

It is the policy of this agency that prevention is the primary means of reducing and controlling misconduct. To that end, it is the policy of this agency to discover and correct organizational conditions which permit the misconduct to occur. Special emphasis is placed on recruitment, selection and training of officers and supervisors, community outreach, and the analysis of misconduct complaints and their outcome.

It is the policy of this agency that each officer shall be provided ready access to an official, agency-written manual which contains specific directions for conducting all aspects of law enforcement work. Categories of misconduct shall be clearly described and defined, and the disciplinary process shall be thoroughly explained in the manual.

III. Procedures

A. Internal Affairs Unit

1. The Internal Affairs Unit is herein established. The unit shall consist of those members of the department as shall be assigned to the Internal Affairs Unit by the law enforcement executive. Personnel assigned to the internal affairs unit shall serve at the pleasure of and be directly responsible to the law enforcement executive or the designated internal affairs supervisor.
 - a. The goal of internal affairs is to insure that the integrity of the department is maintained through a system of internal discipline where fairness and justice are assured by objective, impartial investigation and review.
 - b. The Chief of Police should not assign any personnel charged with representation of members of the collective bargaining unit to the Internal Affairs function.

2. Duties and responsibilities

- a. The Internal Affairs Unit is responsible for the investigation and review of all allegations of misconduct by members of this department.
 - (1) Misconduct is defined as:
 - (a) Commission of a crime or an offense; or,
 - (b) Violation of departmental rules and regulations; or,
 - (b) Conduct which adversely reflects upon the officer or the department.
- b. In addition to investigations concerning allegations of misconduct, Internal Affairs shall be responsible for the coordination of investigations involving the discharge of firearms by department personnel and motor vehicle accidents involving department vehicles.
- c. Internal affairs shall be responsible for any other investigation as directed by the law enforcement executive.
- d. Internal affairs officers may conduct an Internal affairs investigation on their own initiative upon notice to, or at the direction of the law enforcement executive or Internal Affairs supervisor.
- e. Internal affairs may refer investigations to the employee's supervisor for action.
- f. Internal affairs members or officers temporarily assigned to that function, shall have the authority to interview any member of the department and to review any record or report of the department relative to their assignment. Requests from internal affairs personnel, in furtherance of their duties and responsibilities, shall be given full cooperation and compliance as though the requests came directly from the law enforcement executive. Members assigned to the Internal Affairs Unit come under the direct authority of the law enforcement executive, reporting directly to the law enforcement executive through the Internal Affairs chain of command.
- g. The Internal Affairs Unit shall maintain a comprehensive central file on all complaints received by this department whether investigated by internal affairs or assigned to the officer's supervisors for investigation and disposition.
- h. The Internal Affairs Unit shall prepare quarterly reports that summarize the nature and disposition of all misconduct complaints received by the agency for submission to the law enforcement executive officer.
- i. Copies of the internal affairs report shall be distributed to all command personnel, the appropriate authority, and the county prosecutor's office.
- j. An annual report summarizing the types of complaints received and the dispositions of the complaints should be made available to members of the public. The report shall contain a brief synopsis of all complaints where a fine or suspension of ten days or more was assessed to a member of the agency. The names of complainants and subject officers shall not be published in this report.

B. Accepting Reports Alleging Officer Misconduct

1. All department personnel are directed to accept reports of officer misconduct from all persons who wish to file a complaint regardless of the hour or day of the week. Citizens are to be encouraged to submit their complaints in person as soon after the incident as possible. If the complainant cannot file the report in person, a department representative shall visit the individual at his or her home, place of business or at another location in order to complete the report, if feasible.
 - a. Refer to Appendix 2 attached, Citizen Complaint Intake Checklist for guidance on accepting complaints.
2. Complainants shall be referred to the Internal Affairs Unit if an officer is immediately available.
3. If an Internal affairs officer is not immediately available, all supervisory personnel are directed to accept the report of officer misconduct.
4. If an internal affairs officer and a supervisor are not available, any law enforcement officer shall accept the complaint.
5. The officer receiving the complaint will:
 - a. Provide the person making the complaint with the Internal Affairs brochure which explains the department's internal affairs procedures.
 - b. Upon receipt of the complaint, the Internal Affairs investigator or appropriate Bureau Commander will explain the department's disciplinary procedures to the person making the complaint. The officer shall advise the complainant that he/she will be kept informed of the status of the complaint, if requested, and its ultimate disposition.
 - c. Complete the Internal Affairs Report Form according to the instructions provided
 - d. Have the complainant sign the completed form. If the complainant will not sign the form, the officer receiving the complaint will so note that fact. However, the failure of a citizen to sign a complaint will in no way preclude the investigation of the allegations.
6. All department personnel are directed to accept reports of officer misconduct from anonymous sources. If the anonymous complainant is talking to an officer, the officer should encourage him to submit his complaint in person. In any case, the complaint will be accepted.
 - a. In the case of an anonymous complaint, the officer accepting the complaint shall complete as much of the Internal Affairs Report Form as he can with the information provided.
7. Complaints shall be handled as follows:
 - a. All complaints will be forwarded to the Internal Affairs Unit for screening and

entry into the record keeping system.

- b. Complaints of demeanor and minor rule infractions shall then be forwarded to the supervisor of the subject officer.
- c. All other complaints shall be retained by the Internal Affairs Unit, including complaints of:
 - (1) Criminal activity
 - (2) Excessive force
 - (3) Improper arrest
 - (4) Improper entry
 - (5) Improper search
 - (6) Differential treatment
 - (7) Serious rule infractions
 - (8) Complaints of domestic violence
 - (9) Repeated minor rule infractions

- 8. The subject officer shall be notified in writing of the complaint as soon as possible, unless the nature of the investigation requires secrecy.

C. Suspension Pending Disposition or Investigation

- 1. A supervisor, commander or law enforcement executive may immediately suspend an officer from duty if he or she determines 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 related to his or her employment.
- 2. The supervisor imposing the immediate suspension must:
 - a. Advise the employee in writing 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 sufficient opportunity to review the charges and the evidence and to respond either orally or in writing.
 - c. Advise his immediate supervisor in writing of the suspension and the facts and circumstances requiring the suspension.

3. Within five days of the suspension, the department must complete and file formal charges against the suspended employee or return the employee to work.

D. Investigation and Adjudication of Minor Complaints

1. Complaints of demeanor and minor rule infractions shall be forwarded to the subject officer's commanding officer. The commanding officer shall investigate the allegation of misconduct.
2. The investigating officer shall take all necessary steps to investigate the complaint. These steps may include interviewing the complainant, all witnesses and the subject officer, as well as reviewing relevant reports, activity sheets, or dispatcher forms. The investigating officer shall then prepare a report summarizing the matter, indicating the appropriate disposition. Possible dispositions include the following:
 - a. **Exonerated:** The alleged Incident did occur, but the actions of the officer were justified, legal and proper.
 - b. **Sustained:** The investigation disclosed sufficient evidence to prove the allegation, and the actions of the officer violated provisions of rule and regulation or agency procedures.
 - c. **Not Sustained:** The Investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation.
 - d. **Unfounded:** The alleged incident did not occur.
3. If the investigating officer determines the disposition of the complaint is unfounded, not sustained or exonerated, the Investigation report is to be forwarded to internal affairs for review, and entry in the index file and filing.
4. Upon final disposition of the complaint, a letter shall be sent to the complainant by internal affairs explaining the outcome of the Investigation. If the allegation was unfounded or the officer was exonerated this conclusion shall be stated and defined for the civilian complainant. If the allegation was not sustained, the letter shall provide the complainant with a brief explanation why the complaint was not sustained (e.g., insufficient proof, lack of witnesses, etc). If the allegation was sustained and discipline was imposed, the letter shall simply state that the allegation was sustained and that the officer has been disciplined according to department procedures. It is not necessary to specify the imposed discipline.
5. Initiation of disciplinary action for minor complaints
 - a. The supervisor giving the performance notice, oral reprimand or written reprimand shall complete the appropriate disciplinary document.
 - b. The officer or employee shall be advised of the discipline and given a copy of the disciplinary document.
 - c. The supervisor will forward copies of the disciplinary document to the law enforcement executive for review, and to the Internal Affairs Unit for filing.
 - d. A copy of the disciplinary document will be placed in the officer's or employee's

personnel file.

e. For oral reprimands or performance notices

- (1) Six months after the date of the reprimand or notice, the disciplinary report shall be removed from the personnel file and destroyed, provided no other breach of discipline has occurred.
- (2) The subject officer shall be notified in writing that the oral reprimand or performance notice has been purged.

f. For written reprimands

- (1) The written reprimand will remain permanently in the officer's or employee's personnel file

E. Investigation and Adjudication of Serious Complaints

1. All serious complaints shall be investigated by the Internal Affairs Unit, including complaints of:
 - a. criminal activity
 - b. excessive force
 - c. Improper arrest
 - d. improper entry
 - e. improper search
 - f. differential treatment
 - g. serious rule infractions
 - h. complaints of domestic violence
 - i. repeated minor rule infractions.
2. Where preliminary investigative data indicates the possibility of a criminal act on the part of the subject officer, or the investigation involves the use of force by the officer which results in serious bodily injury or death, the county prosecutor shall be notified immediately. No further action shall be taken, including the filing of charges against the officer, until directed by the county prosecutor.
3. The investigating officer shall take all necessary steps to investigate the complaint. These steps may include interviewing the complainant, all witnesses and the subject officer, as well as reviewing relevant reports, activity sheets, or dispatcher forms.
4. Interviewing the subject officer
 - a. The internal affairs investigator shall schedule an interview with the officer.
 - b. One person of the officer's choosing may attend the interview.
 - (1) In Investigations of criminal allegations, It is not appropriate for a union representative to be present. However, the officer shall be given the opportunity to consult with a

union representative.

- c. Before questioning begins, the subject officer shall be informed of:
 - (1) The nature of the complaint,
 - (2) The name of the person in charge of the interview, and the names of all persons who will be present during the interview.
 - d. If the matter under investigation involves an administrative allegation, the officer will be advised of his or her duties and obligations to answer using the Administrative Advisement Form.
 - e. If the matter under investigation involves a possible criminal violation, the Internal Affairs Investigator shall consult with the county prosecutor regarding the advisability of issuing a *Miranda* warning to the subject officer.
 - f. Interview sessions may be audio or video recorded. A subject officer must inform the Internal Affairs investigator in advance of the interview if he or she wishes to have the interview recorded. A recording any interview of a department employee cannot be created without the knowledge of the Internal Affairs investigator.
 - g. If at any time during the questioning session the officer becomes a suspect in a criminal act, the officer shall be so informed and the questioning shall end. Promptly refer the case to the county prosecutor.
5. Upon completion of all possible avenues of inquiry, the Internal Affairs investigator shall complete the following reports:
 - a. Investigation report: This is the objective report of all of the investigative activity, including all of the information obtained during the course of the investigation.
 - b. Summary report: This report, in memorandum format, will summarize the matter, and will provide recommended dispositions for each allegation. Possible dispositions, as defined in Sec IIID of this policy, include the following:
 - (1) Exonerated;
 - (2) Sustained;
 - (3) Not sustained;
 - (4) Unfounded.
 6. Forward the completed reports through the Internal Affairs supervisor to the law enforcement executive.
 7. The law enforcement executive, following a review of the completed report, supporting documentation and information gathered during any supplemental investigation, shall direct whatever action is deemed appropriate.
 8. Upon completion of its investigation with a finding of exonerated, not sustained, or unfounded, internal affairs shall notify the subject officer in writing of the disposition.

9. If the complaint is sustained and it is determined that formal charges should be preferred, the law enforcement executive shall direct Internal Affairs to prepare, sign, and serve charges upon the subject officer or employee.
 - a. The division commander, supervisor or internal affairs, as directed, shall prepare the formal notice of charges and hearing on the Charging Form.
10. The notice of charges and hearing shall direct that the officer 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 plea. Such date for entry of plea shall be set within a reasonable time, at least five days after the date of service of the charges.
11. If the officer charged enters a plea of guilty, the law enforcement executive officer shall permit the officer to present factors in mitigation prior to assessing a penalty.
12. Conclusions of fact and the penalty imposed will be noted in the officer's personnel file after he has been given an opportunity to read and sign it. Internal affairs will cause the penalty to be carried out and complete all required forms.
13. In all cases upon final disposition of the complaint, a letter shall be sent to the complainant by internal affairs explaining the outcome of the Investigation. If the allegation was unfounded or the officer was exonerated this conclusion shall be stated and defined for the civilian complainant. If the allegation was not sustained, the letter shall provide the complainant with a brief explanation why the complaint was not sustained (e.g., insufficient proof, lack of witnesses, etc). If the allegation was sustained and discipline was imposed, the letter shall simply state that the allegation was sustained and that the officer has been disciplined according to department procedures. It is not necessary to specify the imposed discipline.

F. Hearing

1. Upon written notice of a request for a hearing from the subject officer the law enforcement executive will set the date for the hearing within a reasonable time and arrange for the hearing of the charges.
2. Internal affairs shall be responsible for or assist the assigned supervisor or prosecutor in the preparation of the department's prosecution of the charges. This includes proper notification of all witnesses and preparing all documentary and physical evidence for presentation at the hearing.
3. In the event of a hearing, Internal affairs will be responsible for preparing a discovery package from the Internal affairs file, and providing it to the subject officer or his or her representative.
4. The hearing shall be held before the appropriate authority or the appropriate authority's designee.
5. All disciplinary hearings shall be closed to the public unless the defendant officer requests an open hearing.
6. The hearing officer shall recommend a finding of guilty or not guilty, or recommend that the charges be modified. The decision of the hearing officer should be in writing and accompanied by findings of fact for each issue in the case.

7. The hearing officer shall recommend any of the following punishments which he deems appropriate under the circumstances.
 - a. Counseling;
 - b. Oral reprimand or performance notice;
 - c. Written reprimand;
 - d. Monetary fine;
 - e. Suspension without pay;
 - f. Loss of promotion opportunity;
 - g. Demotion;
 - h. Discharge from employment.
8. A copy of the hearing officer's recommended decision or order and accompanying findings and conclusions shall be delivered to the officer or employee who was the subject of the hearing and to the law enforcement executive if he was not the hearing officer.
9. The law enforcement executive shall accept, reject or modify the hearing officer's recommendations including the findings, conclusions and proposed penalty. The executive's decision will constitute the final disciplinary action.
10. Upon completion of the hearing Internal Affairs will complete all required forms including the entry of the disposition in the Index file.
11. If the charges were sustained, internal affairs will cause the penalty to be carried out. The report shall be permanently placed in the officer's or employee's personnel file.

G. Confidentiality

1. The progress of internal affairs investigations and all supporting materials are considered confidential information.
2. Upon completing a case, internal affairs will enter the disposition in the index file.
3. The contents of internal investigation case files will be retained in the Internal Affairs Unit. The files shall be clearly marked as confidential.
4. Only the law enforcement executive or his designee is empowered to release publicly the details of an internal investigation or disciplinary action.

IV. Additional Procedures

A. Inspectional Services

1. Periodically, the Chief of Police will direct the Internal Affairs unit to facilitate and oversee inspectional services. Superior officers will assist in this process as directed by the Chief of Police. The officers assigned to the inspectional services function shall:
 - a. Inspect the Written Directive System
 - b. Inspect the Agency's equipment
 - c. Inspect the personnel of the department

d. Inspect the operations of the department to ensure compliance with rules, regulations and procedures.

2. Any deficiencies observed or non-compliance with standard operating procedures, standing orders or directives shall be reported to the Chief of Police by the Internal Affairs Officer recommending solutions and/or improvements.

B. Privacy Expectations

1. All agency assigned storage space, desks or lockers are subject to search.

C. Officer Responsibilities

1. Any officer that is a witness to an officer's misconduct shall immediately notify the immediate supervisor or the Internal Affairs officer.

2. Any officer that is a witness to a civil rights violation shall cause the action to cease and immediately notify the Internal Affairs officer.

a. Failure to intercede by the witnessing officer(s) may result in a federal charge. 18:U.S.C. 241.

D. Investigation Guidelines- Physical Evidence

1. Investigators should obtain all relevant physical evidence. All evidence, such as clothing, hair or fabric fibers, stains and weapons should be handled according to established evidence procedures.

2. With respect to radio tapes and video tapes, the original tape 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. Tapes should be monitored to reveal the totality of the circumstances.

3. Photographs

a. In the event of a complaint involving excessive force, the following photographic documentation should be obtained when appropriate:

- Photographs of the complainant at time of arrest or following the alleged incident of excessive force.
- Photographs of the subject officer in the event the officer was the victim.
- A recent photograph of the officer in the event a photo spread will be used for identification purposes. The photo spread shall be retained for possible evidentiary purposes.
- Photographs of the scene of alleged incident if necessary.

E. Investigation Guidelines-Physical Tests

1. Police officers who are the subjects of internal investigations may be compelled to submit to various physical tests or procedures to gather evidence. Such evidence may be used against them in a disciplinary proceeding.

2. No person has the constitutional right or privilege to refuse to submit to an

examination to obtain a record of his physical features and other identifying characteristics of his physical or mental condition. (Evd R. 25a) Evidence that may be obtained or procedures that may be used to obtain evidence under this rule include:

- a. Breath Sample
 - b. Blood Sample
 - c. Requiring suspect to speak
 - d. Voice Recordings
 - e. Participation in a suspect lineup
 - f. Handwriting Samples
 - g. Hair and saliva samples
 - h. Urine analysis
1. Generally, a person cannot be physically forced to produce this evidence or submit to such tests, although a court order may be obtained to legally compel him to do so. Refusal to comply with the order can result in contempt of court action and may result in a second disciplinary action for failure to comply with a lawful court order.
 2. Polygraph
 - a. While a police officer who is subject of an internal investigation may request a polygraph examination, an employer shall not influence, request or require an employee to take or submit to a lie detector test as a condition of employment or continued employment (N.J.S.A. 2C:40A-1)
 - b. An officer 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. If a polygraph is used, the test must be administered by a qualified police polygraph operator.