

EASTERN CONNECTICUT STATE UNIVERSITY POLICE DEPARTMENT

TYPE OF DIRECTIVE: General Order	SUBJECT: Investigating Misconduct and Citizen Complaints	EFFECTIVE DATE: 12/05/18	
ISSUING AUTHORITY: Chief Stephen K. Tavares <i>Stephen K. Tavares</i>		POLICY NUMBER: 4.02	RESCINDS: A-22
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This General Order is for departmental use only and does not apply in any criminal or civil proceeding. This General Order should not be construed as creation of a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this General Order will only form the basis for departmental administrative sanctions. Violations of law will form the basis for civil and criminal sanctions in a recognized judicial setting.

I. PURPOSE

The purpose of this policy is to provide all Eastern Connecticut State University Police Department (“ECSUPD” or “Department”) employees, and the public, the procedures for processing and investigating allegations of officer misconduct or citizen complaints. ECSUPD officers and employees are expected to maintain the highest standards of conduct. Officers shall conduct themselves properly and professionally, on or off duty. The purpose of this policy is to establish responsibilities and procedures for conducting investigations of misconduct and serious misconduct (administrative and/or criminal) that may result in disciplinary action and/or criminal prosecution.

II. POLICY

The Eastern Connecticut State University Police Department’s public image is determined by a professional response to allegations of misconduct against its employees. The establishment of procedures for the investigation of complaints is crucial to demonstrate and protect the Department’s integrity. This Department shall accept and fairly and impartially investigate all complaints or allegations of misconduct to determine their validity, and to timely impose any disciplinary or non-disciplinary corrective actions that may be warranted. Complaints may be received in any manner including verbally, in writing, by telephone, through a third party, or anonymously. It is the Department’s policy to investigate every instance of alleged misconduct against a member of this Department, whether criminal or administrative in nature, in accordance with federal or local laws, and Department policies and procedures. All complaints will be reviewed by the Lieutenant or Deputy Chief.

If a complainant expresses fears or retaliation as a result to filing a complaint, they must be assured that those fears will be taken seriously. Complainants should be asked to provide a basis for their concerns if possible, and the information provided should be noted in the complaint. This will allow the supervisor assigned to investigate the complaint to be aware of these fears and develop reasonable strategies to assist the complainant in dispelling those fears.

The Office of the Chief shall be responsible for the investigation of all allegations of serious misconduct and serious use of force incidents pursuant to Department policies and procedures. The Chief will have the authority to utilize resources outside the department to conduct investigations including retaining outside investigators.

III. DEFINITIONS

- A. Complaint: An allegation by a member of the public regarding ECSUPD services, policies or procedures, officer misconduct, claims for damages which allege officer misconduct, and any allegation of possible misconduct of an ECSUPD officer.
- B. Complainant: Any person who files a complaint regarding the conduct of any Department employee, or as a result of ECSUPD's policies, procedures, or actions.
- C. Complaint Control Number (CCN): A sequential number used to identify and track citizen complaint investigations, which is assigned by the Investigator.
- D. Class 1 Complaints: Serious allegations, including alleged criminal conduct that has the potential to damage the reputation of the Department or its personnel.
- E. Class 2 Complaints: Less serious allegations that warrant an investigation, but do not rise to the level of a more serious complaint.
- F. Class 3 Complaints: Minor complaints by a citizen desiring to make an informal complaint against an employee, generally involving an employee's conduct and/or behavior.
- G. Class 4 Complaints: Minor Service complaints by a citizen who contacts the Department questioning, or informally complaining, about a policy, procedure, or tactic used by the Department or an employee.
- H. Counseling or Training: Information relayed to an employee by a ranking officer or training officer, in which the information relayed points out strengths, weaknesses, or training needs, or offers the employee the opportunity to improve performance. The member or employee is advised in clear terms of the breach of conduct or procedure. Counseling or Training is not disciplinary by itself, but may progressively lead to discipline. Steps to remedy the problem shall be outlined and communicated both orally and in writing.
- I. Critical Firearm Discharge: A discharge of a firearm by an ECSUPD officer, but does not include range and training discharges and discharges at animals.
- J. Discipline: A written reprimand, suspension, transfer, demotion, or dismissal.
- K. Employee: Any person employed by the ECSUPD, whether sworn or non-sworn, part-time or full-time.
- L. External Complaint: A complaint that originates from outside the department.
- M. Internal Affairs Designee: The designated Division with primary responsibility for conducting internal affairs investigations of Administrative or Citizen Complaints of Misconduct.

- N. Internal Complaint: A complaint that originates from within the Department. Such complaints may be initiated by other ECSUPD employees or from supervisors who observed, or were informed by other employees, of possible policy violations.
- O. Misconduct: Any conduct by a member or employee that violates law, Rules of Conduct, General or Administrative Orders, and/or lawful orders.
- P. Officers: Any law enforcement officer employed by or assigned to the ECSUPD, whether on or off duty, including supervisors and members authorized to carry department issued weapons.
- Q. Preponderance of the Evidence Standard: The standard of proof in internal investigations is “preponderance of evidence,” rather than the criminal standard of “beyond a reasonable doubt.” A preponderance of evidence has been described as just enough evidence, no matter how slight, to make it more likely than not that the allegation sought to be proved is true or false. The investigative findings are based on all available facts and evidence that is of greater weight or more persuasive than the evidence offered in opposition. Preponderance of the evidence has also been described as a “slight tipping of the scales of justice,” or “more than 50 percent.”
- R. Serious Misconduct: Suspected criminal misconduct and the specific forms of misconduct identified below in Section IV.D. Such conduct shall be investigated by the Internal Affairs Designee and the Criminal Investigation Division of the Attorney General’s Office.
- S. Serious Use of Force: Any action by an officer that involves: 1) the use of deadly force, including all critical firearm discharges; 2) a use of force in which the person suffers serious bodily injury, or requires hospital admission; 3) a canine bite; and 4) the use of chemical spray or Electronic Control Weapon against a restrained person.
- T. Summary Action: Disciplinary action in the form of an oral reprimand, counseling, training or documented in writing, taken by an officer’s supervisor or commanding officer for minor violations of department rules, policies, or procedures as defined by the Department. Summary actions are the lowest level of disciplinary action.
- U. Supervisor: Police officer with the rank of Sergeant or higher who has the authority to make decisions, evaluate, investigate and impose disciplinary measures over the personnel assigned to their Division or Unit.

IV. PROCEDURE

A. Investigations of Citizens Complaints

1. General

- a. All investigations shall, to the extent reasonably possible, determine whether the officer’s conduct was justified. No investigation being conducted by the Internal Affairs Designee shall be closed simply because a subject or complainant is unavailable, unwilling, or unable to cooperate, including a refusal to provide medical records or proof of injury;

- b. All investigations shall be conducted by a supervisor who did not authorize, witness, or participate in the incident, and all investigations shall contain:
 - 1) Documentation of the name and badge number of all officers involved in, or on the scene during, the incident, and a canvass of the scene to identify civilian witnesses;
 - 2) Thorough and complete interviews of all witnesses, subject to the ECSUPD's *Garrity* Protocol, and an effort to resolve material inconsistencies between witness statements;
 - 3) Photographs of the subject(s) and officer(s) injuries or alleged injuries; and
 - 4) Documentation of any medical care provided.
- c. Nothing in this policy precludes the Chief of Police from referring an internal affairs investigation to an outside agency if such action would be in the best interest of the ECSUPD, the Eastern Connecticut State University, and of justice.

B. Role of the Office of the Chief of Police

- 1. Upon receipt of the Complaint Form, the complaint will be reviewed and classified in its proper category for assignment. Categories are identified in section C below.
- 2. The investigating Supervisor shall evaluate complaints of criminal conduct made against ECSUPD employees, and report findings to the Chief. The Chief will authorize transfer of the criminal allegation investigation to the States Attorney's Office. A parallel Internal Affairs Investigation will be conducted to ensure no administrative or departmental violations have occurred, but may be delayed until the resolution of the criminal investigation.
- 3. Upon completion of the Internal Affairs Investigation Report, the report and all supporting documents shall be forwarded to the Chief of Police, or designee, for review. The Chief may accept the report as completed or return the report for further investigation.
- 4. The person or persons shall have the following additional responsibilities:
 - a. Maintain a complaint log both documentary and electronically
 - b. Maintain a central file for complaints in a secured area, and in conformity with records retention requirements of local law;
 - c. Conduct a regular audit of complaints to ascertain the need for changes in training or policy;
 - d. Maintain statistical and related information to identify trends involving all complaints of use of force, officer misconduct, and/or abuse of authority;

- e. Track complaints against individual employees to assist in employee risk analysis and the Early Intervention Program (EIP); and
- f. Provide the Chief of Police, managers, and/or supervisors with quarterly summaries of complaints and final dispositions against officers.

C. Complaint Categories

The following chart depicts the types of complaints, which are defined by the seriousness of the allegation, along with whom the complaint is generally investigated and reviewed by:

TYPES	DESCRIPTION	EXAMPLES	GENERALLY HANDLED BY
CLASS 1	Allegations that have the potential to damage the reputation of the Department or its personnel, and generally include, but are not limited to, allegations of serious misconduct, serious violations of Standards of Conduct and other written directives, or criminal conduct.	<ul style="list-style-type: none"> • Excessive and/or improper use of force • Brutality • False arrest • Unlawful search and/or seizure • Corruption • Dishonesty and untruthfulness • Gross Insubordination • Violation of civil rights • Bias-based profiling • Sexual harassment • Workplace violence • Violation of criminal statutes 	THE OFFICE OF THE CHIEF Formal and Documented with Written Statements and Tape/Video Recorded Interviews DETECTIVE AND/OR OUTSIDE AGENCY INCLUDING PRIVATE INVESTIGATOR
CLASS 2	Allegations that generally include, but are not limited to, allegations of a non-serious nature and violations of Standards of Conduct and other written directives of a non-serious nature.	<ul style="list-style-type: none"> • Violation of policies, procedures or rules, other than those which constitute a Class I Allegation • Inappropriate conduct and/or behavior of a less-serious nature, such as rudeness, discourtesy, and offensive language • Violation of personnel rules 	OFFICE OF THE CHIEF Formal and Documented with Written Statements
CLASS 3	Minor complaints by a citizen desiring to make an informal complaint against an employee, generally involving an employee's conduct and/or behavior.	When a citizen complains about the behavior of an employee, such as rudeness or demeanor, but does not wish to file an official formal complaint.	FIRST-LINE SUPERVISOR Informal and Documented as Informational Purposes Only
CLASS 4	Minor complaints by a citizen who contacts the Department questioning or informally complaining about a policy,	When a citizen questions or complains about the <i>procedures or tactics</i> used by the Department or employee, such as on-scene command presence, or why	FIRST-LINE SUPERVISOR Informal and Documented as Informational

	procedure, or tactic used by the Department or an employee.	handcuffs were used when detaining a subject, but does not wish to file an official formal complaint.	Purposes Only
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D. Serious Misconduct

Serious Misconduct is understood by the ECSUPD to mean suspected criminal misconduct and the following misconduct:

1. All civil suits alleging any misconduct by an officer while acting in an official capacity;
2. All civil suits against an officer for off-duty conduct (while not acting in an official capacity) alleging physical violence, threats of physical violence, racial bias, dishonesty, or fraud;
3. All criminal arrests or filing of criminal charges against an officer;
4. All allegations of unlawful discrimination (e.g., on the basis of race, ethnicity, gender, religion, national origin, sexual orientation, or disability), including improper ethnic remarks and gender bias, but excluding employment discrimination;
5. All allegations of unlawful search and seizure;
6. All allegations of false arrests or filing of false charges;
7. Any act of retaliation or retribution against an officer or person;
8. Any act of retaliation or retribution against a person for filing a complaint against a member;
9. All allegations of excessive use of force or improper threat of force (including strikes, blows, kicks, or other similar uses of force against a compliant subject or administered with a punitive purpose);
10. Any failure to complete use of force reports required by ECSUPD policies and procedures;
11. The providing of false or incomplete information during the course of a ECSUPD investigation, or in any report, log, or similar document;
12. All incidents in which: (1) a person is charged by an Officer with assault on a police Officer or resisting arrest or disorderly conduct, and (2) the States Attorney’s Office (SA) notifies ECSUPD that it is dismissing the charge based upon Officer credibility, or a judge dismissed the charge based upon Officer credibility; or
13. All incidents in which ECSUPD has received written notification from the SA in a criminal case that there has been: (1) an order suppressing evidence because of any constitutional violation involving potential misconduct by a ECSUPD Officer, or (2) any other judicial finding of Officer misconduct made in the course of a judicial proceeding, or any request by a federal judge, local judge, or magistrate that a misconduct investigation be initiated

pursuant to some information developed during a judicial proceeding before a judge or magistrate. ECSUPD shall request that all such entities provide them with written notification whenever it has been determined that any of the above has occurred.

E. Investigation of Public Complaints: Supervisor's Role/Responsibility

1. The person or persons assigned to investigate a citizen complaint shall ensure the following protocols are applied in all investigations:
 - a. Every complaint must be investigated and evaluated based on the Preponderance of Evidence standard.
 - b. Any supervisor who is the subject of a complaint, or who authorized the conduct that led to the complaint, is explicitly prohibited from investigating said incident.
 - c. Supervisors shall ensure that all officers who use force, or are involved in the use of force, shall submit a case report and a written statement regarding the incident, using the Use of Force Report form. The investigating person(s), or designated supervisor(s) will obtain statements from officers who witnessed a use of force.
 - d. During the investigation of a citizen complaint, all relevant evidence including circumstantial, direct, and physical will be considered, and credibility determinations made, if feasible. Officer's statements will not be given any automatic preference over a citizen's statement, nor will a witness' statement be disregarded on account that the witness is connected to the complainant. Every effort will be made to resolve material inconsistencies or discrepancies between witness statements and other collected evidence.
 - e. The person or persons will not close an investigation because the complaint is withdrawn, the alleged victim is unwilling or unable to provide medical records or proof of injury, or the complainant will not provide additional medical statements or written statements.
 - f. The person or persons will consider whether any rule, policy, or procedure of the ECSUPD was violated.
 - g. Conduct an investigation in accordance with the procedures outlined in this policy.
2. At the conclusion of the investigation the person or persons shall prepare an investigative report in accordance with the requirements outlined in this policy.

F. Employee Responsibilities to Report Misconduct

1. An employee must report any instances of employee misconduct as soon as practicable following receipt of information regarding the misconduct.

2. In applicable circumstances, employees are to prevent the deterioration or destruction of any evidence that would support or refute the allegation of misconduct.

G. Confidentiality of Complaints

1. All employees who have knowledge that a complaint has been submitted, or will likely occur, are prohibited from discussing material issues related to the matter.
2. Exemptions include: employees subject to the investigation when consulting with Union or legal representation, in accordance with supervisory directives, testifying at an official hearing regarding the matter, or otherwise authorized by law, policy, or regulation.

H. Time Limits on Completing Internal Affairs Investigations

1. Generally, the Department should strive to complete internal investigations as soon as practical. In cases of formal investigations, it may be possible to complete such an investigation within a few days or a calendar week. Once assigned, administrative investigations by a supervisor should be completed and forwarded to the Chief of Police for review within twenty (20) days.
2. Internal Affairs investigations assigned by the Chief of Police to the person or persons shall be a priority for the Department, and should be expeditiously investigated and reviewed. These investigations should be completed and forwarded to the Chief of Police for review within thirty (30) days. The Chief of Police may waive the 30-day requirement for complex investigations and investigations involving extenuating circumstances.
3. Time limits governing disciplinary action which may arise from internal investigations for police officers and civilian employees shall comply with any applicable State or Federal statutes, Eastern Connecticut State University policies, and provisions of the respective labor agreements for sworn and non-sworn employees.
4. Supervisors shall be held accountable for the quality of their investigations. Appropriate non-disciplinary corrective action and/or disciplinary action will be taken when a supervisor fails to conduct a timely and thorough investigation, neglects to recommend appropriate corrective action, or neglects to implement appropriate corrective action.

I. Notifying Complainant Regarding Status of Complaint Investigation

1. Upon receipt of a complaint, the investigating supervisor shall provide a copy of the Complaint Form to the complainant, acknowledging its receipt. For formal investigations, the investigating supervisor will also send a letter to the complainant (if known) under the signature of the Chief of Police, acknowledging its receipt within five (5) business days of receipt. In some cases, this may be accomplished in person and/or via telephone. A written letter, however, should still be sent to the complainant for additional verification of receipt of the complaint. The letter will include the following information:
 - a. That the complaint has been received by ECSUPD and is currently pending;

- b. That a CCN has been assigned (the CCN shall be provided);
 - c. That they will be informed in writing of the outcome of the complaint promptly following the conclusion of the investigation; and
 - d. That they may contact the designated investigator (name, telephone, and/or email of the investigator shall be provided) at any time for further information while the investigation is pending.
2. The assigned investigator of an internal affairs case is responsible for providing periodic status reports to complainants on all pending internal investigations. Generally, investigators should maintain periodic contact with their complainants and provide them status reports on the investigation, as far as practical. Such contact can be accomplished by telephone or email, in lieu of a written letter.
 3. For formal or informal investigations, the Complainant shall be notified as indicated below, by the Chief of Police or designee, informing him/her of the results of the Department's investigation. Such notification should normally occur within ten (10) days after the conclusion of the investigation and the determination by the Chief of Police of the "Finding of Facts."

J. Investigative Interviews and Procedures of Officers

1. Prior to being interviewed, the officer against whom a complaint has been made shall be advised of the nature of the complaint as well as of his/her rights and responsibilities relative to the investigation in accordance with the provisions of the applicable labor agreements.
2. All interviews will be conducted while the Officer is on duty, unless the seriousness of the investigation or other justifiable reason is such that an immediate interview is required. *(Refer to applicable labor agreement.)*
3. During interviews there will be one designated primary interviewer.
4. The complete interview shall be electronically recorded. The recording will note the time at which breaks are taken in the interview process, who requested the break, and the time at which the interview resumed.
5. The Officer shall be provided with the name, rank, and command of all persons present during the questioning.
6. Subject to the approval of the Chief of Police, Officers will be administered the applicable Warnings prior to interview:
 - a. Garrity Warnings: For compelled statements if the inquiry is administrative.

- b. Miranda Warnings: Where the inquiry is criminal and the officer is under arrest or in custody.
7. Officers may have Union representation during the Internal Interview.
- a. Officers, under internal (administrative) review, may have present a union representative with them during any administrative internal investigative interrogation so long as the representative is not involved in any manner (*i.e. a witness or subject of the complaint*) with the incident under investigation, or a conflict of interest does not exist. (*Note: refer to applicable labor agreement.*)
 - b. The representative's role is primarily that of an observer and shall not be permitted to interrupt the interview except for the purpose of advising and/or conferring with the officer who is concerned about a contractual right.
 - c. In criminal investigations the employee has the right to talk to legal counsel or to have one present during questioning.
8. Examinations and Searches
- a. The department may direct order that the officer undergo an intoxilizer, blood, urine, psychological, polygraph, medical examination, or any other exam, including submission of financial disclosure statements that are not prohibited by law, if it is believed that such an examination is pertinent to the investigation, so long as they do not violate law, or any labor agreement.
 - b. An on-duty supervisor may order an officer to submit to a breath, blood, or urine test when there is reasonable suspicion that alcohol and/or drug usage is suspected as the factor directly related to allegations of misconduct, and is required to submit to such tests as the result of either being involved in a traffic accident with a department vehicle or involved in a discharge of a firearm on or off-duty.
 - c. An officer may be ordered to participate in a lineup if it is used solely for administrative purposes. This does not in any way affect the requirements of a legal order to participate. This includes photographic identifications if the investigator deems it necessary.
 - d. Desks, lockers, storage space, rooms, offices, equipment, information systems, work areas, and vehicles are the property of the ECSUPD and are subject to inspection. They may also be searched to retrieve University owned property, or to discover evidence of work related misconduct, if there is reason to suspect (*reasonable suspicion*) such evidence is contained therein.
 - e. Private property can be stored in areas mentioned above; however, employees will not expect privacy in those areas. Only those employees who are acting in their official capacity may be authorized to search or inspect areas assigned to other employees.

K. Disposition and Adjudication of Complaints

1. All investigations into citizen complaint allegations of misconduct require review and disposition by the officer's chain of command.
2. All citizen complaint allegations of officer misconduct will be fully investigated and documented.
3. All summary actions shall be documented and copies and disposition(s) provided to the subject officer. Copies may, where appropriate, be incorporated in the employee's performance evaluation.
4. Once the investigation is deemed complete, the internal affairs investigator's supervisor assigned to the investigation shall review the complaint report and investigative findings. This authority will compile a report of findings and provide a disposition for each allegation as follows:
 - a. *Sustained*: The investigation disclosed sufficient evidence to determine that the alleged conduct did occur and was in violation of law and/or Department rules, regulations or policies;
 - b. *Not sustained*: Where the investigation determines, by preponderance of the evidence, that there is insufficient fact(s) to decide whether the alleged misconduct occurred;
 - c. *Exonerated*: Where the investigation determines, by preponderance of the evidence, that the alleged conduct did occur but did not violate ECSUPD policies, procedures, or training; or
 - d. *Unfounded*: Where the investigation determines, by preponderance of the evidence, that there are no facts to support that the incident complained of actually occurred;
 - e. *Reconciled*: At the discretion of the Chief of Police, the process of reconciliation may be encouraged in lieu of any of the above dispositions. When authorized by the Chief of Police, supervisors receiving complaints shall to the extent possible, bring together the Complainant and the officer or employee involved in minor violations and attempt reconciliation. This may be used where the Complaint is from a misunderstanding on the part of the affected officer, employee or the Complainant. Reconciliation may be employed for complaints of a minor nature that do not reflect:
 - 1) Discredit upon the agency.
 - 2) Discredit upon the involved employee.
 - 3) Commission of a criminal offense; or
 - 4) Allegations of racism, bigotry, or prejudice against any race, religion, creed, national origin, sexual orientation, or circumstances beyond the individual.
5. Investigative findings shall also include whether: (i) the police action complied with policy, training, and legal standards regardless of whether the complainant suffered harm; (ii) the incident involved misconduct by any officer; (iii) the use of different tactics should or could have been employed; (iv) the incident indicates a need for additional training, counsel, or

other non-disciplinary corrective measures; and (v) the incident suggests that the ECSUPD should revise its policies, training, and tactics.

6. Disciplinary action shall be administered in accordance with Department policy and the applicable labor agreement.
7. Following final disposition of the complaint, a letter shall be sent to the complainant, addressed from the Chief or his/her designee, explaining the final disposition.
8. Whenever reasonably possible, the investigation of complaints should be completed within ninety (90) days from the time the department knew, or should have known, about the alleged violation; unless a stay is granted by the Chief of Police, or another time frame is required by departmental policy, law, or applicable labor agreement.
9. Final Disciplinary Authority is vested in the Chief of Police.
10. In cases where there exists probable cause to believe that a fraudulent complaint was logged (*officially documented*) in violation of Connecticut law, the case may be referred to the State Attorney's Office for a prosecutorial determination.

L. Office of the Chief of Police Records and Confidentiality

1. The Office of the Chief of Police shall be informed of all final disciplinary decisions.
2. Internal Affairs investigation case files and information shall be maintained separately from personnel records.
3. Internal Affairs information is considered confidential and will be retained under secured conditions within the Office of the Chief of Police.
 - a. Internal Affairs case files and personnel dispositions may not be released to any source without prior approval of the Chief of Police, unless otherwise provided by law.
 - b. Case investigation files shall be retained for a period of time as defined by law, labor agreements, or the Chief of Police.

M. Training

1. The Department will continue to provide training to all officers on the citizen complaint process and the appropriate responses in handling citizen complaints, as developed and administered by the Office of the Chief of Police.
2. All supervisory personnel will be required to attend periodic refresher training, as determined by the department, regarding the policies and procedures contained herein, and professionally accepted practices related to conducting internal investigations.