

LAW ENFORCEMENT MANAGEMENT INSTITUTE

CONSIDERATIONS FOR POLICY DEVELOPMENT AND IMPLEMENTATION
CONCERNING THE COMPLAINT REVIEW PROCESS
WITHIN THE OFFICE OF THE SHERIFF

A RESEARCH PAPER
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MODULE III

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INTRODUCTION

Diligent internal review of complaints against officers should serve both the professional interests of police administrators and officers and the general interest of the community in deterring police misconduct. The integrity of a law enforcement agency often depends on the way that agency handles complaints against its officers. A department should implement review and discipline procedures that promote the fair, prompt, and impartial resolution of all complaints made against officers.

Personnel management and discipline is perhaps the most difficult area of management facing administrators today. In the first place, it is a volatile, emotional area. In the second place, there is a lot of continually developing law. In the third place, unlike most other employees, police officers have enough knowledge of the law to make them very aware of what can and cannot be done with regard to their employment relationship.

The way a law enforcement agency handles citizen complaints often becomes a focal point of administrative and community concern. A law enforcement agency should view citizen complaints as a resource which indicates community perceptions as well as possible incidents or patterns of misconduct. If used properly, complaints from the public

can assist the law enforcement chief executive to improve the performance of his agency.

The purpose of this study will be to consider factors necessary to provide adequate guidelines for the implementation of an internal affairs function in relation to the constraints of operation within a rural Texas Sheriff's Office. Topics to be discussed include: purpose or mission of the function, selection of personnel to perform the function, controls and lines of communication, types of complaints, complaint receipt, investigatory procedures, mechanics of reporting investigations, and types of disposition. These items will be discussed while keeping in mind the desired goals for establishing an internal function. These goals are identified as: protection of the public, protection of the agency, protection of personnel, removal of unfit personnel, and correction or adaptation of policy and procedure.

ENVIRONMENTAL CONSIDERATIONS

Although each agency largely controls the selection, training, and discipline of personnel, elements outside the law enforcement organization almost always influence agency policies. Thus, legislative bodies, the media, public interests groups, and the Constitution limit the power of managers and compete for influence over agency decisions.

These external demands tremendously influence the mission and purpose of law enforcement agencies and further dictate the manner in which law enforcement will conduct itself in the policing of society. Public attention has been riveted on sequential incidents of police misconduct across the nation which have been brought into most homes by means of the electronic media. Although police actions might have changed very little over the years, technology has now publicized that activity. As noted by Mangan:

Public perception is also based to some extent upon image and external communication. It is, therefore, critical that we carry our role modeling from the agency into the community and that we impress upon our employees the importance of how they look and act, in addition to what they say. We come into our role with a certain trust account of credit-ability with the public-much of which has been earned by those who have preceded us. Our constant challenge-particularly for those in positions of responsibility-is to add to that account of trust, reinforcing and enriching it by our examples, actions and decisions.¹

Mangan additionally, notes the hidden negative circumstances attached with this perception:

All of us serve as lighting rods for our elected officials and, in that capacity, we are constantly spending political capital in our relationships with the community, the city council and the union. All of these transactions in public service carry a price. And all of us, if we are active and accept this responsibility, accumulate luggage as we go along. If we are truly willing to stand up for what is right-regardless of the cost-the time will come when people will seek to deliver some form of payback for real or imagined wrongs. Integrity demands that we recognize that this also is part of the process, however unfair.²

As a result of the increased media focus on "live" police action, which is a by-product of improved technology and public demand for reality-based entertainment, citizens are becoming more aware of police policy and practice. What was previously a remote possibility that might happen to somebody else, is now being brought into their own homes. Those who had never before seen some of the physical and emotional confrontations which are characteristic of criminal activity and apprehension are viewing it nightly through the marketing media. Therein lies the dilemma for the media and the police. They are dependent upon one another for their existence. This interaction however, could produce positive overtones as observed by Herman Goldstein:

It follows that if media coverage is sophisticated, reflecting an awareness of the importance and complexity of police operations, public understanding is increased and the pressures exerted on the police, both by the public and the media, will support a more enlightened approach toward policing. But if the media lacks this awareness, they can be a major impediment to change.³

Other impacting elements that will affect police discipline and procedure are the continuing trends involving increased civil litigation, revitalized calls for stronger citizen review boards, and an increase in the power base of the civil service system. As society's frustration with its inability to receive satisfactory performance, service, and accountability, from its law enforcement agencies increases, these alternatives become an increasingly popular means of

assuring that police managers listen to citizens' concerns. As law enforcement agencies begin to develop improved working relationships with their communities, the emphasis on sharing ideas and working toward common goals will spill over into the inner mechanisms of the law enforcement agency itself. A positive expectation derived from this concept is that law enforcement agencies will recognize that the manner in which the employee is treated, will impact on the attitude the officer projects to the public. This expectation can be met once the "fear" the employee experiences toward the organization is reduced along with a shift in attitudes within the police sub-culture. Negative aspects of the police policing themselves is summarized by Dr. Malcolm K. Sparrow:

The complaints investigation process, even when it leads to formal disciplinary enquiry, leaves many complainants dissatisfied. They discover that they become witnesses in a hearing conducted by the police for the police. The traditional complaints system is simply an adjunct to the internal disciplinary system.

Due to growing dissatisfaction with police complaint procedures, a steadily increasing proportion of the public is turning to civil litigation instead. In the civil courts, the burden of proof required is lower, the judgement is visibly independent and compensation is available.⁴

Regarding the fear aspect found within an organization, Paul Myron states:

We have learned some hard lessons as a result of our experiences during the past couple of years--perhaps most significant of which is that acting contrary to department policy can be fatal to a person's career.⁵

Considering these and other complex issues, the disciplinary system and complaint review process should be addressed following a brief and general analysis of the employer-employee relationship within the rural Texas Sheriffs' domain.

AT-WILL EMPLOYMENT ASPECTS

In Texas, there are two types (from a personnel administrative perspective) of municipal police agencies, as well as County Sheriffs, Department of Public Safety, and a group of others who are peace officers under Article 2.12, Texas Code of Criminal Procedure. The two types of municipal police agencies are defined as non-civil service and civil service or Chapter 143 cities (Chapter 143, Local Government Code, V.T.C.A.) The differences imposed by the existence or non-existence of civil service coverage relates primarily to procedural matters and to promoting persons within the hierarchy, awarding benefits, and taking disciplinary action. Agencies without Chapter 143 coverage must be aware of the various aspects of due process of law and remember that because it is not statutorily mandated, it cannot be ignored.

The traditional employment relationship in Texas is "at-will" meaning that either the employer or the employee may terminate the relationship at anytime without further liability. This concept is defined by the Calhoun County, Texas Sheriff's Manual to mean the following:

- A. Employment by the Sheriff of Calhoun County, Texas is "at-will". This means that the employee relationship can be terminated by either the employer or the employee at any time with or without cause, and with or without notice. Employees have no right of continued employment with the Sheriff or the County of Calhoun, Texas and no expectation of continued employment.
- B. All employees of the Sheriff of Calhoun County, Texas are "at-will". An employee may be discharged, demoted, transferred, suspended (with or without pay), or otherwise disciplined with or without notice and or hearing.
- C. The Sheriff of Calhoun County can unilaterally adopt new policies, or rescind, modify, or amend this Manual, and any term or condition of employment. These actions can be taken by the Sheriff at any time, without notice.
- D. The provisions of this Manual control over any contradictory statement[s] made by any supervisor, official, or former officials. No agreements or assurances concerning employment which are contrary to this Manual are binding on the Sheriff or The County of Calhoun, Texas.
- E. The provisions of the Manual are not contractual in nature. That is, these provisions do not form the basis of any contract between the Sheriff, The County of Calhoun, Texas, or the employee.
- F. The terms and conditions of employment and service of employees, as they are enumerated by law, will be governed by the applicable statutes and laws.⁶

Thus, without a contract to the contrary, well established law in Texas holds that an employment relationship may be terminated at any time by either the employee or the employer with or without cause. The following court decisions illustrate this concept:

East Line and R.R.R. Co. v. Scott: employer can terminate employee at any time without cause where the employee's term of service is left to the discretion of the employer.⁷

Jennings v. Minco Technology Labs, Inc.: at-will status means that the employment contract continues between the employer and employee at their mutual pleasure and either may put an end to it at any time without cause.⁸

Additionally, there are several exceptions to the at-will doctrine. A summary of these exceptions is taken from the Texas Bar Journal:

The Legislature has created exceptions prohibiting discharge of an employee for prohibited discrimination or retaliation; because the worker has filed a workers' compensation claim; because of union membership or non-membership; because of active duty in the state militia; because of jury duty; because a worker failed to purchase goods from a particular store or merchant; because of a child support or child custody order or writ; and, in the case of public employees, because of reporting, in good faith, a violation of law to an appropriate law enforcement agency. In addition, the Texas Supreme Court has created a prohibition against discharging an employee for refusing to commit an illegal act, and recently recognized a public policy exception when the employee proves that the reason for his termination was the employers' desire to avoid contributing to or paying benefits under the employee's pension fund. Finally, public employees may not be discharged for exercising their free speech rights under the Texas or United States Constitution.⁹

Therefore, the only restrictions placed on the disciplinary or termination actions of at-will employers are those that are imposed for unconstitutional or illegal reasons.

Regarding policy manuals, Texas courts have traditionally rejected the idea that the handbook forms a contractual basis of employment:

Texas courts have repeatedly resisted the argument that promises contained in employee handbooks, standing alone, are sufficient to modify an employee's at-will status. Texas courts have held that a cause of action for wrongful termination requires that the employee show that a written contract exists limiting the employer's right to fire at-will or that the writing, in a meaningful way, provides that the employer does not have the right to terminate at-will. Where there is an expressed agreement dealing with the discharge of employees, Texas courts have repeatedly rejected arguments that employee handbooks can be read as expressed agreements. Additional cases have held that an employee handbook serve as no more than a general guideline and does not limit the employer's ability to fire employees.¹⁰

Concerning this issue a federal district judge held in the case of Glagola v. North Texas Municipal Water District that:

Employee handbooks or personnel manuals unilaterally issued by an employer, standing alone, may not expressly or impliedly limit an employer's ability to terminate an employee at will.¹¹

This case did note however, that employment at-will may be changed if there is some indication of a verbal agreement specifically adopting the handbook as a contract or as being contractually limiting. This is also evidenced in another

Texas case, United Transportation Union v. Brown where the Texarkana Court of Appeals held that:

An oral agreement incorporated an employee handbook and thereby modified the at will employment agreement.¹²

In light of this and similar cases, it is critically important that the design and subsequent implementation of employee handbooks or policies and procedures be undertaken as to clearly adhere to the principles of the at-will doctrine while exercising due regard that language coupled with administrative conduct may inadvertently create an employee-employer contract. This regard and the need for protection of property interest by employees when related to the at-will relationship is expressed within The Rights of Law Enforcement Officers:

Today, it is extremely rare to find a law enforcement employer who remains a true at-will employer. Virtually all are subject to restrictions on their disciplinary authority, restrictions which have been imposed by collective bargaining agreements, civil service rules, state laws, or their own internal rules and procedures. Though the level of protection granted law enforcement employees varies tremendously, depending upon the type of restrictions placed upon the employer, virtually all are entitled to some measure of substantive protection from inappropriate discipline.

Increasingly, courts are regarding the rules and regulations of at-will employers as creating a binding contract with employees. This implied contract, though only implied, creates substantive job protections which an employer must follow.

The implied contract created by operations manuals and regulations can contain procedural requirements which an employer must follow prior to disciplining an employee. If the employer's rules also list the grounds upon which employees may be disciplined, the employer may be required to justify its decision on both substantive as well as procedural grounds.¹³

Concerning due process and employee manuals with regard to at-will employment the following possibility is acknowledged:

Public employers face the additional danger of an employee handbook creating a right to predetermination due process rights. To establish a right to procedural due process under federal or state law, a plaintiff must demonstrate that he or she had a legitimate claim of entitlement to that interest....The court must look to state law to determine whether an employee has a property interest in continued employment...Absent such an interest, employment may be terminated for any reason or no reason.¹⁴

Personnel manuals for public law enforcement agencies are a virtual necessity in today's employment environment. These manuals can, however, present the employer with a multitude of problems if written improperly. Employers should be careful not to allow supervisors to enter into oral agreements or conduct that would by their actions change the at-will employment status of an employee. Although disclaimers should be contained within the policy manual, this alone may not be sufficient. Courts will examine the situation as a whole to determine the employment relationship.

FUNCTION

Discipline can be defined as orderliness developed through training and obedience to a prescribed standard or set of rules. In general, positive methods of discipline--those that gain willing obedience and loyal cooperation without the use of punishments are preferable. Because punishment often results in poorer motivation and performance, positive methods of discipline, such as praise, constructive discussion of needed improvements, and training to achieve improvements, are recommended. In those cases where negative punishment is needed as with deliberate rule violators or following the failure of positive measures, such punishment should be swift, certain, fair, impartial, and most of all consistent. These conditions are re-inforeced by IACP'S Complaint Review Policy:

...Handling of complaints ultimately necessitates reference to the broader disciplinary system used by law enforcement agencies in order to maintain internal control, award excellence in employees, and correct behavior that falls below the standards set by the agency for efficient delivery of services. The complaint review process and disciplinary system are not isolated functions within the agency that only occasionally converge and impact upon each other and the operations of the agency. These components should be conceptualized and addressed by the agency as a dynamic and unified system for implementation and reinforcement of departmental goals and objectives. As such, each law enforcement executive should develop a philosophy for his agency that reflects this inter-relationship, and that can activate the system in an efficient manner.¹⁵

In regard to the importance of the department's consistency factor, Mike Vowell notes:

The department must be consistent in what is acceptable. If it is not, then it no longer sets the standards. The reasoning and beliefs supporting the standards should be part of the department culture. Otherwise the department members are expected to accept a standard without any logical reason.¹⁶

It is therefore of critical importance that issues pertaining to internal review be formulated and structured to interpret and co-exist with the mission, goals, and values of the organization as administered through the Sheriff. This concept is conveyed in a section of IACP's Complaint Review Policy:

...Law enforcement agencies must provide a firm foundation for the disciplinary process by developing clear goals to be achieved by the department. It is not enough for the chief executive officer to inform officers that the mission and the ultimate goal of the department is to prevent and detect criminal activity. While this may be the overall mission, this statement or goal is too broad and simplistic. Modern agencies operate in a complicated environment that affects the mission, and thus requires thoughtful assessment of how many factors affect delivery of public services.¹⁷

This function of an internal complaint review is also defined by L. Territo as:

The IAU is an administrative tool which may be used by the chief administrator to make plain through sanctions

his intolerance of employee misconduct, but also allows the police agency to defend the lawful and proper conduct of employees in the performance of their duties.¹⁸

Even the smallest agency needs to have a credible, defensible and consistent disciplinary process. But the disciplinary process is only the reactive side of the system. Every agency must also have some form of an inspection or professional standards function charged with developing and maintaining good feedback systems. As taken from the IACP'S Complaint Review Policy:

Each law enforcement agency should have a mechanism for investigating both internal and citizen complaints alleging employee misconduct. The internal investigations function is critical to maintaining the integrity and professionalism of the agency. Public trust and confidence in law enforcement is injured where the public perceives that officer misconduct is ignored or punished in a negligible fashion. In addition, the internal investigations function serves to maintain the internal discipline and control necessary to provide efficient law enforcement services.¹⁹

STAFFING

It should be the policy of the agency that all allegations of employee misconduct be appropriately investigated. In smaller agencies, a specialized unit may not be established. However, the function is important and investigations may be assigned to an individual on an as-needed basis or be conducted by the chief executive officer.

In instances where an individual is assigned, authority granted for the internal review should be under the direct auspices and control of the agency's chief executive officer for the duration of the investigation. Alternatively, within the at-will sheriff's system, it is advisable that the investigator report to the chief deputy. The chief deputy will keep the sheriff apprised of relevant developments. This step allows for an informal appeal from the employee to the elected official whose decision is finite within this system.

The individual selected should possess a number of qualities concerning general investigative ability which will help ensure the effectiveness and integrity of the assignment.

Rationally, the individual must possess a high degree of investigative skill. This level of proficiency learned through experience and training must also incorporate a familiarity of state statutes and departmental policies and procedures. The investigator should also, from the law enforcement perspective, be proficient in interviewing and interrogation techniques particularly concerning specialized areas of "peer" interviewing.

Personal attributes of the person selected must include the abilities of being a good communicator, good listener, open minded, educated, and maintenance of good public relation skills. This last characteristic will aid in the development of another critical component to be considered during the investigation that being a working knowledge of local ethnic make-up and problems.

Finally, the investigator should be perceived as having an excellent reputation among peers and supervisors. This factor serves not only to reduce the incidents of personal bias or subjective judgements in regard to the investigation but adds credibility to the investigation itself and reinforces the commitment to the internal review process by the administration. This element is noted in IACP's

Complaint Review Policy:

Choice of staff to perform internal investigations, and departmental commitment to the entire disciplinary process are critical factors in ensuring that this process is not undermined. The chief executive officer and command staff must be committed to developing a strong and meaningful internal investigations function within the department. When command officials demonstrate an ambivalent attitude toward investigation of officer misconduct, it is transmitted through the ranks. Officers perceive that they will not be punished for misconduct, as the command staff are not seriously committed to maintaining these standards. Thus, internal discipline is weakened.²⁰

COMPLAINT PROCESSING

Because the effectiveness of any police agency is dependent upon its reputation for integrity within the community, internal review procedures for investigating serious violations of the law by law enforcement officers should be established by all agencies. An internal affairs function should act with integrity, be responsive to complaints from both inside and outside the agency, and keep an accurate record of its activities. Citizens should not be discouraged from presenting complaints and each complaint should be recorded and its progress monitored. The complaining citizens should be entitled to present his complaint of misconduct in person, by letter, or by telephone without fear of retaliation. A model policy developed by the Police Executive Research Forum advises:

Complaints shall be accepted from any source, whether made in person, by mail or over the telephone. Individuals are encouraged to submit their complaints in person in order to obtain a complete report as soon as possible after the incident. In cases in which the complainant cannot file the report in person, agency personnel may visit the individual at his or her home, place of business or hospital in order to complete the report.²¹

Complaints that are anonymous should also be accepted and given due consideration as also noted by the PERF policy:

Complaints shall be accepted from anonymous sources, juveniles and persons under arrest in police custody so long as the complaint contains sufficient factual information to warrant an investigation. Each complaint shall be investigated to its logical conclusion and the investigation results properly placed into the appropriate category of completed cases.²²

The PERF model also balances the need for filing complaints against police officers with a consideration concerning the possibility of false allegations:

While encouraging the filing of legitimate complaints against officers as means by which they can be held accountable to the public, the department simultaneously seeks to hold members of the public responsible for the filing of false and malicious allegations against police officers. In cases of this nature, the complainants will be informed that appropriate legal proceedings will be instituted to remedy such action.²³

Receipt of a complaint requires that it be classified into one of two categories: formal/informal complaints and criminal offenses. Informal complaints are those viewed as minor in nature and may be handled at the lowest level of supervision in the form of counseling. Formal complaints are those that are of serious misconduct and require the internal investigative function. Criminal

complaints should be separated from internal complaints and investigated according to the normal standards of care for such an investigation.

INVESTIGATION

A law enforcement agency is entitled to use its own internal investigation procedures in determining the culpability of its officers for misconduct. However, the community has a right to expect that the department will expeditiously and legally resolve citizen complaints. The investigative tools of questioning, use of the polygraph, administering of physical tests, search and seizure, lineups, etc. should be applied in a manner consistent with local legislation and an officer's constitutional rights. These basic elements of investigation are incorporated within the PERF model policy:

Complaints of repeated harassment, demeanor and serious rule infractions, and complaints of a serious nature shall be handled by the internal affairs office. An office investigator shall conduct a confidential investigation of the complaint and assemble the necessary materials such as:

1. Physical evidence
2. Statements or interviews from all witnesses

3. Statements or interviews from all parties of specialized interest such as: doctors, employers, lawyers, teachers, legal advisors, parents, etc.
4. Investigative aids, such as various reports, activity sheets, complaint cards, and dispatcher's forms.²⁴

Once a proper investigation has been concluded, a determination concerning the allegation must be made from the situational facts. The PERF model identifies the determination as "conclusions of fact" and defines these dispositions as follows:

Proper conduct: The allegation is true, but the action of the agency or the officer was consistent with departmental policy, and the complainant suffered no harm.

Improper conduct: The allegation is true and the action of the agency or the officer was inconsistent with departmental policy, and the complainant suffered harm.

Policy failure: The allegation is true, and although the action of the agency or the officer was not inconsistent with departmental policy, the complainant suffered harm.

Insufficient evidence: There is insufficient evidence to prove or refute the allegation.

Unfounded complaint: Either the allegation is demonstrably false or there is no credible evidence to support it.²⁵

Once the determination of a complaint has been made, it should be forwarded from the assigned investigator to a commanding officer for review and subsequently to the Sheriff for consideration of discipline. The investigator

shall not recommend or formulate any type of discipline concerning his investigation.

CONCLUSION

Historically, police organizations have patterned much of their internal processes from those of the military. The rank structure of the organization, the rules, the regulations, codes of conduct, and the manuals of procedure and methods are well evidenced in many police organizations. Likewise, the work product of internal review has been used to primarily justify punishment. All too often many police managers act as if a problem is solved once blame has been assigned while the organizational environment that may have prompted the wrongdoing in the first place is not addressed.

If law enforcement is to improve its level of service and sustain itself within society, the process by which an agency monitors itself and its human resources must be reformulated. Change, as society moves into the next century, must be more than forced compliance. Trends suggested earlier in this study, to include employee "fear", will continue to play a determining role in the matters of

discipline. Increasingly, employees appealing disciplinary actions for administrative review will require attorneys to be present at each phase of the inquiry process. Media demands will increase for public disclosure of internal inquiry and disciplinary case disposition. In contrast, police unions will continue to demand non-disclosure of disciplinary actions. Civilian demands for review of police performance and conduct as a means by which the public can be assured of police accountability will continue to increase.

In light of these factors, the traditional role of the internal review process could be adapted from that of reactive to proactive. The attitude of positive discipline must be introduced as an operating mechanism within the organization. Focus must be placed on why the misconduct occurred rather than measures to correct. Measures should be taken to insure that discipline is administered in a consistent and fair manner. In direct contrast to its traditional role, the internal review process, as some have suggested, could be used as a method to determine reward for performance. Training implications within the areas of ethics and cultural sensitivity need to be considered. Statistical data collected by the internal process could be useful in determining problem employees and could further identify those employees in need of pre-problematic

counseling. Lastly, the internal review process could be incorporated within the scope of background investigations during initial employment phases to assist in eliminating unqualified candidates for further consideration of employment.

With future implications in perspective, the agency must be mindful to achieve the goals of the internal review process in relation to the overall mission of the department. In protecting the public, confidence is instilled in the minds of the community about the agency. In protecting the department, the community is given a chance to find redress for its grievances against the agency. This also shows the department's willingness to police itself and to some degree shields the agency civilly by demonstrating that its internal investigative procedures for ensuring disciplinary policies are being followed. In protecting the employee, officers are cleared of unjust or false complaints which contributes to maintaining the officers reputation. In removing unfit personnel, the potential for future civil liability is reduced. In regard to policy and procedural problems, areas of repeated inconsistencies are identified, therefore efforts can be directed toward correction of these deficiencies.

Concerning the internal review process within the at-will context, it is recommended that due process

interests should be observed and documented in all instances by allowing the employee timely notice and allowing an opportunity for the employee to be heard. Regardless of case law that currently favors the at-will doctrine, law enforcement agencies will increasingly be judged on the merits of civil service and accreditation commissions' standards. Considering the continually developing law aspects, viable options should be operationally in place to accommodate these impending issues. The liberal application of the at-will doctrine does not prohibit an administrator from restricting its use.

Adoption of a policy considering these criteria for the handling of complaints against law enforcement officers contained within this study will provide the agency with a fair, consistent, and defensible internal review process that will be supported by deputies as well as local government and the community.

MODEL POLICY

CHAPTER XX INTERNAL COMPLAINT REVIEW-PENDING APPROVAL

XX.01 Purpose

A. The purpose of this policy is to inform all employees of departmental procedures for addressing complaints of misconduct.

XX.02 Policy

A. It is the policy of the Calhoun County Sheriff to investigate all complaints of alleged officer misconduct, and to equitably determine whether the allegations are valid or invalid and to take appropriate action.

XX.03 Definitions

A. Channels: the chain of command, excluding the Sheriff.

B. Corrective action: corrective training, counseling, or both.

C. Calhoun County Sheriff's Manual current policies authorized and issued by the Sheriff of Calhoun County, Texas.

D. Corrective or disciplinary action: corrective training, counseling, written reprimand, suspension, demotion, discharge, or any combination of these actions.

E. Grievance: any work-related conditions, situations, or occurrences that may be resolved through the chain of command by the Sheriff.

F. Formal Grievance: any job-related complaint that is in written form and is submitted to the Sheriff through the chain of command.

G. Improper Conduct: the allegation is true, and the conduct of the employee is inconsistent with agency policy.

H. Insufficient Evidence: there is insufficient proof to confirm or to refute the allegation.

I. Internal investigations authority: the designated employee(s) ultimately responsible for conducting investigations into allegations of employee misconduct.

J. Notification of employee: An employee shall be considered notified, according to the provisions of this chapter, upon being confronted in person or when written notification is mailed by certified mail to the employee's last reported address.

K. Policy failure: the allegation is true, and although the action of the agency or the employee was not inconsistent with agency policy, the complainant suffered harm.

L. Proper conduct: the allegation is true, but the action of the employee was consistent with agency policy.

M. Suspension: a period of time in which an employee is prohibited from performing their duties. Licensed personnel are prohibited for exercising authority of their office during the suspension period.

N. Unfounded complaint: either the allegation is demonstrably false or there is no credible evidence to support it.

XX.04 GENERAL PROVISIONS

A. This section sets forth the method to handle every complaint that an employee violated a statute, departmental rule, regulation, order, or procedure. Employees shall receive, to the extent feasible, a written list of specific violations.

B. Complaints:

1. All complaints, including anonymous complaints, against an employee or against the department shall be recorded as soon as practicable by the employee receiving the complaint or the employee receiving a complaint may refer it to a supervisor for recording.
2. The person recording the complaint shall forward a copy of the complaint to the Chief Deputy and, the original copy of the complaint shall be forwarded directly to the Sheriff.
3. Anonymous complaints are to be accepted and investigated in the same manner that all complaints are handled.

4. Any employee who is complained against will be notified of the complaint, and told to make a report concerning the allegations, unless to do so might jeopardize the investigation of the complaint.

XX.04 CONTROL LOG

A. Upon receiving a copy of the complaint, the Chief Deputy will cause this information to be entered in the control log and see that all subsequent entries are maintained.

XX.05. SUPERVISOR'S ACTION

A. Upon becoming aware of a possible violation of departmental rules under this section, the supervisor of the employee complained against shall, as soon as practicable, begin a preliminary investigation to determine whether a violation occurred. The Lieutenant, Chief Deputy, or Sheriff may, at any time, order the supervisor of the employee complained against to stop a preliminary investigation.

B. The preliminary investigation shall be limited to questioning employees under the supervisors direct supervision, questioning witnesses and complainants who are immediately available and gathering evidence which may be lost if not secured immediately. The supervisor shall not take any investigative action which might jeopardize a simultaneous or subsequent investigation. The preliminary investigation shall be completed within two work days.

C. Immediately after following the procedures in section XX.05(B), the supervisor shall forward to the Chief Deputy the following:

1. A report of the alleged violation
2. All additional documents relating to the investigation; and
3. If the investigation has yielded sufficient evidence, recommendations for
 - a. charges and disciplinary action
 - b. corrective action or counseling, or
 - c. exoneration.

XX.06 COMMAND ACTION

- A. The Chief Deputy after receiving a report and recommendations, if any, outlined in XX.05(C) shall immediately forward to the Sheriff one copy of the reports, recommendations, if any, and all additional documents relating to the investigation.
- B. The Chief Deputy shall review the report(s) and recommendations received and either approve or disapprove them. If the Chief Deputy believes that further investigation is necessary, unless directed otherwise by the Sheriff, proceed to complete the investigation, or refer the matter back to the supervisor of the employee complained against, or refer to the administrative Lieutenant or refer to an investigator for further investigation.
- C. At the conclusion of the investigation or upon receiving an investigative report from the Sheriff, the Chief Deputy shall prepare a report summarizing the facts and, based on the evidence state if a violation or a departmental rule has or has not occurred. If a determination is made that sustains a violation the Chief Deputy may impose discipline (any below termination) after notifying the Sheriff of the intended action.

XX.07 INTERNAL INVESTIGATIONS

- A. The Chief Deputy shall act on behalf of the Sheriff in carrying out any internal investigation.
- B. The Sheriff shall notify a citizen complainant, if any, that the complaint is being investigated, unless to do so might jeopardize the investigation or unless the citizen's address cannot be ascertained.
- C. Any employee who is the subject of an internal investigation shall be afforded all protection provided by law. Prior to any interview or special examination, the employee under investigation will receive confidential written notification of the complaint. Depending upon the circumstances of the initial complaint, the employee may be placed on restricted administrative assignment by the Chief Deputy or Sheriff pending the outcome of the investigation.
- D. Whenever a complainant or witness refuses either to make a statement or to verify a statement made and transcribed, the investigator shall note this refusal and any explanation in the record. The Chief Deputy may weigh the refusal to make a statement or to verify a statement

when considering the case and decide whether to continue the investigation.

E. The Chief Deputy may recommend to the Sheriff that a case be referred to the District Attorney for criminal charges.

F. The investigator shall make every effort to interview the complainant (if known), the accused employee, witnesses, the employee's immediate supervisor, and any other persons whose statements might assist in the just resolution of the matter.

G. The investigator may order the employee to cooperate in such an investigation and issuing any appropriate orders, the investigator shall be the Sheriff's designee. In addition to any other authorized methods, the investigator may utilize the following investigative procedures when appropriate:

1. An employee may be ordered to appear before the investigator at a reasonable time and place to submit to questioning or other investigation such as a line-up, breath test, polygraph test, voice print, handwriting exam, or other non-testimonial evidence test. When a complaint from a citizen is the basis for the investigation the infraction is non-criminal, and no corroborating information has been discovered, the employee shall not be required to submit to a polygraph examination until the citizen has submitted to a polygraph examination which is specifically directed and narrowly related to the investigation.
2. If criminal prosecution is contemplated against an employee, the employee shall be given the Miranda warnings and allowed to have counsel if requested before any interrogation. The employee is also entitled to have counsel where provided by law or approved by the Sheriff or Chief Deputy for any other type investigation. If criminal prosecution is not contemplated, the employee may be ordered to respond to questions and to cooperate with other types of investigation. Counsel may be present at the discretion of the investigator.
3. An employee's personal property shall not be subjected to search or seizure without probable cause, and a warrant where required by law.

Departmental property may be searched at any time, even if assigned to, or used exclusively by, a single employee.

4. Departmental communications facilities are monitored at all times. Other communications or conversations may be monitored at any time, under conditions permitted by law.
5. The employee will be informed that his failure or refusal to answer any appropriate question, or take any authorized test, or to be photographed, may result in dismissal from the department.

H. Whenever an internal investigation yields evidence of possible criminal misconduct by person other than employees of the department, the investigator shall notify the Sheriff, who shall take whatever action may be deemed appropriate.

I. At the conclusion of an internal investigation, the investigator shall, in writing, document all evidence gathered. All reports made, gathered, or handled will be maintained in a secure manner and area by the person conducting the investigation as well as those individuals receiving copies of this internal investigation. The completed case shall be forwarded to the Sheriff and Chief Deputy.

J. The Chief Deputy shall review the investigation material and take the following action:

1. Issue a memorandum to the employee of the charge specifying the allegation(s) of misconduct and the preliminary determination of corrective and/or disciplinary action to be taken. Corrective and/or disciplinary action will be held in abeyance for five days to allow the employee an opportunity to bring forward and compelling reasons that would bear upon a final decision, or
2. Issue a memorandum of the above action to the Sheriff.
3. Issue a memorandum of exoneration to the employee and the Sheriff.

4. In all cases where charges and recommendations are brought forward, the appropriate form(s) shall also indicate a conclusion of fact for each allegation of misconduct and shall cover the following as appropriate:
 - a. Proper conduct
 - b. Improper conduct
 - c. Policy failure
 - d. Insufficient evidence
 - e. Unfounded complaint

XX.08 APPEAL

A. An employee who has been charged may appeal the decision through the chain of command to the Sheriff. The decision of the Sheriff is final in all instances.

XX.09 DISMISSAL

A. When the Sheriff shall issue a disciplinary action that results in dismissal of an employee, the following will be afforded the employee:

1. A statement citing the reason for dismissal
2. The effective date of the dismissal
3. A statement of the status of fringe benefits after dismissal
4. A statement as to the content of the officer's employment record relating to dismissal.

ENDNOTES

1. Terrence J. Mangan, "Organizational Integrity Critical to Law Enforcement Success", an article in The Police Chief, Vol. LIX, No. 3, (a publication of IACP, Inc., Arlington, VA., March 1992): 47, 48.
2. *ibid.*, 48.
3. Herman Goldstein, Policing a Free Society, Ballinger Publishing Co., Cambridge, MA. (1977): 316-317.
4. Dr. Malcolm K. Sparrow. "Complaints Against Police and Departmental Management: Making the Connection" an article in The Police Chief. (Aug. 1992): 72.
5. Paul Myron. "Crooks or Cops: We Can't Be Both". An article in The Police Chief. (Jan. 1992): 23.
6. Calhoun County, Texas Sheriff's Manual, Section 3.01 (Revised January 1993): 8.
7. John H. Spurgin, and Cynthia Hassman, "The At Will Employment Doctrine And Employee Handbooks", Texas Bar Journal, Austin, TX. (January 1990): 27
8. *ibid.*, 27.
9. *ibid.*, 27.
10. *ibid.*, 27.
11. *ibid.*, 29.
12. *ibid.*, 29
13. Will Aitchison, The Rights of Law Enforcement Officers, (second edition), The Labor Relations Information System, Portland, OR. (1992): 49.
14. The At-Will Employment Doctrine and Employee Handbooks: 28.
15. "Complaint Review Policy", a publication of The IACP National Law Enforcement Policy Center, Arlington, VA., (Jan. 1990): 4.
16. Mike Vowell. "I.A.D.". An article in Law and Order Magazine. (Nov. 1991): 106.
17. IACP Complaint Review Policy: 2.

18. L. Territo. "Internal Affairs Unit-The Policeman's Friend or Foe". (Nov. 1981): 34.
19. IACP Complaint Review Policy: 4.
20. *ibid.*, 5.
21. Police Executive Research Forum, "Police Agency Handling of Citizen Complaints: A Model Police Statement" (Sep. 1981): 10
22. *ibid.*, 10.
23. *ibid.*, 11.
24. *ibid.*, 13,14.
25. *ibid.*, 17.

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January 6, 1994

Jerry Williams, Director
Bill Blackwood Law Enforcement Management Institute of Texas
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Dear Jerry,

Based upon previous and existing policy, the following Research Project paper(s) have been found to be in substantial compliance with the goals and objectives of the Graduate Management Institute program:

James Swan, Calhoun County Sheriff's Office

Should you have any questions regarding this matter, please contact Dr. James Killingsworth at (817) 898-2125 or (817) 898-2126.

Sincerely,

Jim A. Alexander, Ph.D., Project Director
Bill Blackwood Law Enforcement Management Institute of Texas
Texas Woman's University

enclosure(s)

JK:tmm