

	<b>SFASU POLICE DEPARTMENT</b>	
	<b>Policy 2.4 Internal Investigation Process</b>	
	<b>Effective Date: 04/10/19</b>	<b>Updated: 05/01/2021</b>
	<b>Approved: John Fields, Jr. Chief of Police</b>	
	<b>Reference: TBP 2.04, 2.05, 2.06, 2.07, 2.08, 2.09, 2.10 / IACLEA 4.2.1, 4.2.2, 4.2.3, 4.2.4, 4.2.5, 4.2.6a &amp; b, 4.2.7, 4.2.8, 4.2.9a - c, 4.2.10, 4.2.11, 4.3.1b &amp; c</b>	

## I. POLICY

The department's image and reputation depend on the personal integrity and discipline of all departmental employees. To a large degree, the public image of the department is determined by what kind of response the department gives to allegations of misconduct against its employees. The department must competently and impartially investigate all allegations of misconduct by employees and complaints bearing on the department's response to community needs. The department recognizes that its personnel are often subject to intense pressures in the discharge of their duties. The employee must remain neutral under circumstances that are likely to generate tension, excitement, and emotion. In these situations, actions and events frequently result in misunderstanding and confusion. It is to the advantage of all employees to have a procedure for the investigation of the more serious allegations and underlying circumstances so that complaints can be resolved in light of the complicated pressures of law-enforcement work.

## II. PURPOSE

The purpose of this policy is to describe the procedure that a citizen must follow in making a complaint against department personnel, to outline the procedure for investigating complaints, and to list and define the dispositions of complaints.

## III. PROCEDURES – GENERAL

### A. Receipt of complaints

The department encourages any person to bring forward grievances regarding misconduct by employees. Department members shall receive all complaints courteously and shall handle them efficiently. All officers are obligated to explain complaint procedures to anyone who inquires.

## B. Responsibilities of supervisors

1. First-line supervisors are primarily responsible for enforcing conformance with departmental standards and orders.
2. First-line supervisors shall know the officers in their charge by closely observing their conduct and appearance.
3. First-line supervisors shall be alert to behavioral changes or problems in their subordinates and, if necessary, document these changes and confer with higher authorities. The first-line supervisor shall assess the behavior, and take or recommend appropriate action.
4. The supervisor shall recommend and, if appropriate, help conduct extra training for officers not performing according to established standards (IACLEA 4.3.1b).
5. The first-line supervisor shall employ counseling techniques sanctioned by the department. Counseling is used to adjust and correct minor, infrequent errors or instances of poor performance and to ascertain the nature of any professional or personal problems that bear on performance.
6. The supervisor shall document all instances of counseling (TBP 2.04, and IACLEA 4.3.1c & e).

## C. How to make a complaint

A copy of "How to Make a Complaint" is posted in the public area of the department, provided to media representatives, posted on department's website (<http://www.sfasu.edu/upd/complaint-process>) and given to any person requesting information on how to make a complaint (IACLEA 4.2.4).

## D. Responsibility for handling complaints

1. All complaints (including anonymous complaints) alleging a violation of the law or policy, and/or personnel complaints will be documented and investigated (IACLEA 4.2.1).
2. Complaints regarding law-enforcement operations will be handled through the chain of command, beginning with the first-line supervisor.

3. Complaints involving how law-enforcement service is provided or a failure to provide service or improper attitudes or behavior may be investigated by an assigned supervisor or by the Chief of Police.
  4. Deputy Chief is responsible for all internal affairs functions and reports directly to the Chief of Police (IACLEA 4.2.3).
  5. Depending on the nature of the complaint, the Chief of Police may request another agency or DPS to undertake the investigation (TBP 2.06).
- E. Complaint-handling procedures. NOTE: This same procedure can also be used by agency employees who wish to file a complaint against another employee.
1. All complaints, regardless of nature, can be filed in person, by mail, or by phone at any time. As part of the follow-up investigation, persons making complaints by mail or phone normally shall be interviewed and a written, signed complaint prepared.
  2. A signed letter of complaint will be accepted as a signed complaint without requiring any specific form.
  3. Anonymous complaints shall be followed up to the extent possible. In case of an anonymous complaint, the officer or other person who receives the anonymous complaint shall reduce the complaint to writing in a memorandum with as much information as possible and forward the report to the Chief of Police.
  4. Every effort shall be made to facilitate the convenient, courteous, and prompt receipt and processing of any person's complaint. An employee of the department who interferes with, discourages, or delays the making of complaints shall be subject to disciplinary action.
  5. Normally, a person with a complaint shall be referred to a supervisor or the Chief of Police, who shall assist the individual in recording pertinent information. If initially reported to a supervisor, the first-line supervisor shall conduct a preliminary investigation. The Chief of Police may, if appropriate, conduct a preliminary investigation. The preliminary investigation consists of questioning the officer, complainants, or witnesses, and securing evidence. Upon completion of the preliminary investigation, the following documents shall be prepared and forwarded through the chain of command:
    - a. a report of the alleged violation;

- b. any documents and evidence pertinent to the investigation; and
  - c. recommendations for further investigation or other disposition.
6. If the first-line supervisor or other investigators determine that the complainant is apparently under the influence of an intoxicant or drug, or appears to have a mental disorder, or displays any other trait or condition bearing on his or her credibility, the supervisor or investigator shall note these conditions.
  7. Any visible marks or injuries relative to the allegation shall be noted and photographed.
  8. Prisoners or arrestees also may make complaints. Circumstances may require that a department representative meet the complainant at a jail or prison for an interview. If appropriate, the representative will have photographs taken of any injuries suffered by the complainant.
  9. An employee who receives a complaint through U.S. mail shall place the correspondence and envelope in a sealed envelope and forward it to the Chief of Police, who shall determine investigative responsibility.
  10. Complaints received by telephone (by dispatchers or other employees) shall be courteously and promptly referred to a supervisor or the Chief of Police. The dispatcher or employee shall record the name and telephone number of the complainant and state that the Chief of Police or, if unavailable, the supervisor will call back as soon as practical.
  11. In every case, the Chief of Police will be notified of any complaint as soon as possible by the supervisor receiving the complaint. Complaints received overnight will be brought to the Chief's attention the next workday. Complaints alleging a violation of the law or any other serious violation should be reported immediately regardless of the time of day (**TBP 2.07** and **IACLEA 4.2.7**).
  12. Complaints may also be filed through the university's EthicsPoint reporting system. Individuals may contact the EthicsPoint hotline at 1-866-294-9539 or submit the complaint through the EthicsPoint website.
  13. Employee-related complaints may additionally be made to the university's Department of Human Resources.

## F. Disposition of complaints generally

The Chief of Police or his/her designee shall:

1. Notify the complainant, in writing, as soon as practical, that the department acknowledges receipt of the complaint, that it is under investigation and that the complainant will be advised of the outcome (IACLEA 4.2.9a).
2. Enter the complaint into the complaint log, assign a complaint number, and have the complaint investigated. Minor complaints alleging rudeness, minor policy violations, and general performance issues may be assigned to a supervisor for investigation and resolution (IACLEA 4.2.6a). Allegations of a violation of the law or serious policy violations will be investigated by the Deputy Chief, an investigator assigned by the Chief of Police, or an outside agency as determined by the Chief of Police (IACLEA 4.2.6b).
3. Maintain complaint files separate from personnel files.
4. Take disciplinary action following the investigation, if appropriate.

## G. Disposition of a serious complaint

1. Allegations of misconduct that might result in discharge, suspension, or demotion, or allegations of criminal charges are serious complaints. The term "serious complaint," in this manual, means that there will be an "internal investigation." Internal investigations examine alleged brutality, gross excesses of legal authority, or allegations involving supervisory or multiple personnel.
2. If a criminal offense is alleged, two separate investigations shall be conducted: a criminal investigation and an administrative or internal investigation. The criminal investigation examines compliance with criminal law while the internal investigation determines compliance with policy and procedure. The Chief of Police will assign these investigations as required.
3. In cases of a serious complaint the Chief of Police shall:
  - a. Determine if the officer complained of should remain on-duty, be relegated to non-contact assignments, or put on administrative leave until the investigation is complete. The President's approval is required to be placed on administrative leave.
  - b. Determine and assign responsibility for the investigation.

- c. Cause the complaint to be registered and assigned an investigation number in the complaint log.
  - d. Maintain close liaison with the district attorney in investigating alleged criminal conduct. Where liability is at issue, the Chief shall similarly maintain contact with legal counsel.
4. All investigations will be completed within 45 days to include the taking of disciplinary action when necessary. If additional time is necessary to conclude the investigation, a request for extension will be presented to the Chief in writing providing justification for the extension. If the Chief agrees to an extension, a specific number of days will be approved. A copy of the request for extension will be provided to the involved officer and the original placed in the case file (TBP 205 and IACLEA 4.2.8). In addition, the IA investigator will immediately notify the complainant in writing about the extension and why it was requested (IACLEA 4.2.9b).
5. Upon completion of any investigation, the Chief of Police will notify the complainant in writing of the results of the investigation and any action taken (TBP 2.10 and IACLEA 4.2.9c).

#### **IV. INVESTIGATIVE PROCEDURES**

- A. Two types of investigations may take place: Administrative or Criminal. Different rules govern interviews of employees in each case.
- B. Assistance of legal counsel
  1. Employees are permitted to have an attorney, supervisor, or other representative with them in the room during any interview regarding allegations of criminal misconduct.
  2. The employee's representative is limited to acting as an observer at the interview; however, the attorney may advise and confer with the employee during the interview.
- C. All Interviews
  1. Prior to being interviewed, the subject employee shall be advised of the nature of the complaint and provided a written copy of the complaint. This does not apply to an on-the-scene investigation that occurs immediately

after an incident being investigated if the limitations would unreasonably hinder the essential purpose of the investigation (IACLEA 4.2.10).

2. All interviews will be conducted while the employee is on duty, unless the seriousness of the investigation is such that an immediate interview is required.
3. During interviews conducted by the department, one employee will be designated as the primary interviewer
4. The complete interview shall be recorded. The recording will note the date and time of the interview, who is present at the interview, the time at which breaks are taken in the interview process, who requested the break, the time the interview resumed, and the time the interview was ended.
5. The employee shall be provided with the name, rank, and command of all persons present during the questioning.
6. An investigator may not threaten a police officer who is the subject of an investigation with punitive action during an investigation. However, an investigator may inform a police officer that failure to truthfully answer reasonable questions directly related to the investigation or to fully cooperate in the conduct of the investigation may result in punitive action.

#### D. Interviews for criminal investigative purposes

1. If the Chief of Police believes that criminal prosecutions are possible and wishes to use statements against the employee in a criminal proceeding, or at least wishes to maintain the option of their use, he/she or another interviewer shall:
  - a. Give the employee the rights as specified in the Texas Code of Criminal Procedure, Article 38.22.
  - b. In addition to the rights set forth in state law, the Chief or designee shall advise the employee that if he/she asserts the right not to answer questions, no adverse administrative action will be taken based upon the refusal.
  - c. If the employee decides to answer questions at this point, the responses may be used in both criminal and disciplinary proceedings.

#### E. Interview for administrative purposes

1. If the Chief of Police wishes to compel an employee to answer questions directly related to his or her official duties, the Chief of Police or another interviewer shall advise the employee of the following:
  - a. You are advised that this is an internal administrative investigation only.
  - b. You will be asked and are required to answer all questions specifically related to the performance of your duties and your fitness for office.
  - c. All questions specifically related to employment must be fully and truthfully answered.
  - d. If you refuse to answer these questions, you can be subject to discipline that can be as much as discharge or removal from office.
  - e. Any answers given are to be used solely for internal administrative purposes and may not be used in any subsequent criminal prosecution should such occur.
  - f. The purpose of the interview is to obtain information to determine whether disciplinary action is warranted. The answers obtained may be used in disciplinary proceedings resulting in reprimand, demotion, suspension, or dismissal.
2. In an interview for administrative purposes, no Miranda rights are required. However, Miranda rights are required for all criminal investigations (IACLEA 4.2.10).

#### V. INVESTIGATIVE TOOLS AND RESOURCES

- A. In addition to interviews of the employee and witnesses, other activities in support of a complaint investigation or internal investigation may be required, including:
  1. The Chief of Police may order medical and laboratory examinations.
  2. The Chief of Police or officer in authority may, based on reasonable suspicion or his/her observation, require a department employee to submit to a test for alcohol or drug use while on duty. The results may be used in a disciplinary hearing. Refusal to submit to the examination will be grounds for disciplinary action and may result in the employee's dismissal.
  3. If the employee is believed to be under the influence of alcohol, a licensed breathalyzer operator shall administer the test. The Chief of Police or officer in authority shall witness the test and sign the report.



4. If the employee has a reading of .02 or higher, or there is other competent evidence of impaired abilities to perform duties, the officer shall be relieved of duty by the Chief of Police or officers in authority.
5. If the employee is believed to be under the influence of self-administered drugs, he/she may be compelled to submit to a blood or urine test. The test shall be administered under medical supervision where hygienic safeguards are met and in accordance with University policy (11.6). The sample shall be handled using the same safeguards as evidence in a criminal process.
6. If the test shows positive results, or there is other competent evidence of impaired abilities to perform duties, the employee shall be relieved of duty as soon as possible by the Chief of Police or other officers in authority.
7. If an employee refuses to submit to a test, (alcohol or drugs) the Chief of Police or other officer in authority shall immediately relieve the employee from duty for failure to cooperate in an administrative investigation and is subject to disciplinary action including termination. .
8. Property assigned to the employee but belonging to the department is subject to inspection if the department has a reasonable suspicion that evidence of work-related misconduct may be found therein. Department property includes files, storage lockers, desks, and vehicles.

#### B. Photograph and lineup identification procedures

1. Officers may be required to stand in a lineup for viewing for the purpose of identifying an employee accused of misconduct. Refusal to stand in a properly conducted lineup is grounds for disciplinary action and may result in dismissal if criminal prosecution is not anticipated.
2. A book of photos of department employees may be maintained for the purpose of identification of an employee accused of misconduct.

#### C. Financial disclosure statements

An employee may be compelled to make financial disclosure statements when directly and narrowly related to allegations of misconduct involving any unlawful financial gain.

#### D. Polygraph

1. All personnel shall be required to submit to a polygraph if ordered to do so by the Chief of Police.
2. The Police Chief may order employees to take a polygraph under the following circumstances:
  - a. The complainant has taken and passed a polygraph concerning the incident, unless the complainant is willing to submit to testing but the polygraph operator determines the complainant is not a fit subject due to mental condition, age, or medication.
  - b. Regardless of whether or not the complainant takes a polygraph (or is positively identified), and the complaint is of such a nature as to bring severe discredit and suspicion on the department and cannot be satisfactorily resolved in any other manner.
3. The results of the polygraph examination shall not be used as the sole basis for disciplinary action against any employee.
4. Any polygraph examination given under the provisions of this order shall be administered by a private contractor licensed to administer polygraph examinations in the State of Texas or must be a licensed examiner from another law-enforcement agency. No employee shall administer an examination to another employee.
5. Refusal to submit to a polygraph examination or to answer all questions pertaining to the charges in the polygraph examination, or deliberately impeding the administration of the polygraph shall be grounds for disciplinary action and may result in dismissal from the department.

#### VI. ADJUDICATION OF COMPLAINTS

- A. The Chief of Police will classify completed internal affairs investigations under the following headings:
  1. Unfounded - no truth to allegations.
  2. Exonerated - allegations true, but are the result of adherence to departmental policy or procedure. Exonerated complaints will be reviewed by the Chief of Police for consideration of policy revision.

3. Not sustained - unable to verify the truth of the matter under investigation.
  4. Sustained - allegations are true. Complaints will not be classified as sustained unless the finding is based on facts determined during the investigation (**TBP 2.04**).
- B. Completed investigations classified as unfounded, exonerated, or not sustained will be maintained in internal affairs files in the Chief's office. Sustained complaints shall be filed in the individual employee's department personnel file with a copy in the internal affairs files
- C. Disciplinary action taken shall be determined by the seriousness of the violation or the extent of injury to the victim, and the officer's prior disciplinary history. It shall be commensurate with the circumstances surrounding the incident, and the employee's service record, including prior sustained complaints, will be considered. Disciplinary action shall be taken in accordance with University policy 11.4 (**IACLEA 4.2.11**).
- D. Disciplinary records
1. The department shall maintain a log of all complaints.
  2. The complaints and internal investigative files shall be kept in a secure area and shall be maintained in accordance with state law and university policy (**IACLEA 4.2.2**).
  3. The Chief shall direct a periodic audit of complaints to ascertain a need for training or a revision of policy.
  4. The Chief shall publish an annual or other periodic summary of complaints that shall be made available to the public (**TBP 2.09** and **IACLEA 4.2.5**).