



<b>APD Policy CHAPTER 6 INTERNAL AFFAIRS DISCIPLINE/GRIEVANCE/OFFICER DV</b>	<b>ABERDEEN POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL</b>
<i>This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.</i>	
<b>Applicable State Statutes:</b> S.D. Codified Laws § 23A-37; <b>Related Policies:</b> § 23-3-42.1; § 23-3-39.8; § 23-3-39.4; § 23-3-39.5; § 23A-3-3;	
<b>DATE IMPLEMENTED: June 15, 2020</b>	
<b>SPECIAL INSTRUCTIONS:</b>	<b>NUMBER OF PAGES: 25</b>

- I. **Purpose:** The purpose of this policy is to inform all employees of internal departmental procedures for addressing complaints of misconduct. This policy is not a contract and is not intended to create and does not create any rights, nor does it modify or change City personnel, grievance, or discipline policy. It is imperative that the Aberdeen Police Department operates a degree of transparency and is responsive to complaints alleging employee misconduct and external concerns regarding the operation of the Department. Members of the public should be provided with a reasonable avenue for any redress of grievances they may have with the service received by police employees and the conduct of the Police Department. This policy provides members of the Aberdeen Police Department with the procedures for the acceptance of complaints, the initiation of the administrative investigative process, the process for conducting a fair and reasonable investigation, the proper methods for adjudication of these administrative investigations, and the methods for the administration of fair, reasonable and defensible discipline.
- II. **Policy:** It is the policy of this department to investigate and document all complaints of alleged employee or agency misconduct; to equitably determine whether the allegations are valid or invalid, and to take appropriate action.
  - A. To ensure that complaints alleging employee or agency misconduct are accepted and investigated in a consistent and reasonable manner to uncover the truth of the allegations.
  - B. To identify areas of misunderstanding by the complaining citizen.

- C. To identify employees whose attitude, behavior and/or performance is in need of correction and supervisory intervention.
- D. To protect the Department employees and the Department from erroneous or false complaints.
- E. To Identify Department policies, training and/or practices in need of reevaluation, clarification and/or correction.

### III. **Definitions:**

- A. Complaint of employee misconduct: A complaint is an allegation from any source of an act or omission by an agency employee, which if proven true, would be considered misconduct or a violation of agency policies, rules, or regulations.
- B. Note: Complaints regarding the validity of traffic citations or parking tickets are not considered complaints for this definition and the party should be referred to the proper court for resolution.
- C. Complaint of agency dissatisfaction: A complaint from an external source of dissatisfaction with an agency policy or practice.
- D. Public concerns regarding law enforcement operations not amounting to a complaint: A concern expressed by a member of the public, which does not meet the agency's definition of a complaint, but must be documented by the agency employee receiving the information from the member of the public.

### IV. **RULES AND REGULATIONS**

#### A. **INVESTIGATION OF COMPLAINTS AGAINST MEMBERS**

- 1. **All complaints** which pertain to violations of departmental policies or procedures, or allege employee misconduct shall be categorized, documented and investigated by the department.
- 2. **All complaints can originate from any of the following sources;**
  - a. Individual aggrieved person,
  - b. Third party,
  - c. Anonymous
  - d. Agency employee
  - e. News media
  - f. Governmental agency, or
  - g. Notice of civil claim,
  - h. Complaints can be made by members of the public:
    - i. in person,
    - ii. delivered in writing,
    - iii. by telephone,

- iv. e-mail
  - v. or other means which give sufficient information regarding the nature of the complaint.
- 3. **For the employee's protection** all complaints should be in writing and recorded whenever possible for reference.
- 4. **Police Employee Responsibilities:** Whenever an employee becomes aware of a citizen's complaint or becomes aware of misconduct of another department employee he/she shall
  - a. immediately notify an on-duty supervisor and ensure that follow-up to the complaining person will not be delayed.
  - b. If a supervisor cannot be made available or the party making the complaint refuses to wait for the supervisor, the employee will gather all available information regarding the complaint and contact numbers.
  - c. The employee shall ensure that this information is directed to a Sergeant or Captain at the earliest moment during the employee's shift.
  - d. Failure to follow these acceptance provisions will result in disciplinary action against the involved employee.
- 5. **Supervisor responsibilities:** Whenever a supervisor becomes aware of a person requesting to make a complaint or an incident which will likely result in a complaint or administrative investigation, the supervisor shall conduct an immediate preliminary investigation to include:
  - a. Conduct a recorded interview with the complaining person attempting to ascertain each and every allegation of misconduct alleged. Should the allegations not amount to a complaint consistent with the department definition of a complaint, the supervisor will advise the party that his/her dissatisfaction will be recorded and forwarded for departmental review.
  - b. The supervisor accepting the complaint, or if the incident is an occurrence likely to result in a complaint or administrative investigation and no specific complaining person is present, the supervisor shall respond to the scene of the police encounter/incident and:
    - 1. Determine the identity of persons involved, witnesses, other police agency's personnel and agency employees,
    - 2. Ensure that proper evidence is collected and/or documented,

3. Ensure that all reasonable documentation and physical evidence is maintained. This includes police reports, communications/dispatch information, MDT transmissions, medical documentation, and video recording of any portion of the police involvement,
4. Ensure that all necessary medical treatment is provided and documentation is preserved,
5. Notify all persons consistent with the specifics of the incident.
6. A Sergeant or Captain may attempt to resolve a category 3 complaint prior to conducting a full investigation, where applicable. Attempts to resolve complaints shall be documented.
7. The Sergeant or Captain shall document all complaints in writing and promptly forward them to the Operations Division Commander.

**B. THE COMPLAINT INITIATION PROCESS** is not incumbent on cooperation of the complaining person. In the event that the complaining person refuses to cooperate with the investigation or there is no identifiable complainant and the information known to the supervisor satisfies the agency's definition of a complaint, the complainant will be listed as Agency.

**C. COMPLAINTS DEFINED**

*A complaint is defined as*

1. An allegation from any source of circumstance(s) amounting to a specific act or omission which, if proven true, would amount to employee misconduct; or a violation of Department policies, rules or regulations.
2. An expression of dissatisfaction, from an external source, with a policy, procedure, practice, philosophy, service level, or legal standard of the agency.
3. A disagreement over the validity of a traffic infraction or criminal arrest is not a complaint. The complaining person should be advised to contact the proper court having jurisdiction in the matter.
4. Public concerns regarding law enforcement operations not amounting to a Complaint: A concern expressed by a member of the public, which does not meet the Department's definition of a complaint, but must be documented by the agency employee receiving the

information from the member of the public.

5. Misconduct is an act or omission by an employee which, if proven true, would normally result in some form of discipline or sanction. This would include:
  - a. Commission of an unlawful act. (Crime)
  - b. Neglect of Duty
  - c. Violation of any City of Aberdeen or Aberdeen Police Department regulation, procedure, rule, policy, or training procedure.

#### **D. COMPLAINT CATEGORIES**

Once a complaint is received, the Operations Division Commander will review complaint and classify it into one of the following categories:

##### **Category 1**

Category 1 complaints are considered the most serious and shall always be investigated by Internal Affairs. A Category 1 complaint is an act or omission that, if proven true, would constitute willful or wanton disregard for Aberdeen Police Department policies and procedures which include, but are not limited to:

1. Dishonesty or any breach of integrity by an employee which reflects discredit on the Police Department.
2. Unauthorized use of weapons and/or unjustified use of force, failure to conform to a law which would constitute a Class one misdemeanor or greater. (See Criminal violations for investigative process)
3. Harassment/Discrimination involving civil rights violations or Potential-Risk Incidents (This would Include tort claims where allegations are made in regard to use of force, civil rights, false arrest and/or imprisonment, and wrongful death.
4. Alcohol and/or substance abuse.
5. A Serious breach of department rules and regulations. (Serious breaches of department policy depend on the elements of each case.)
6. Officer-involved shootings and use of force incidents resulting in serious injuries. (The investigation will review and only address department policy compliance, supervision, tactics, and training.)
7. Complaints against employees where an outside agency is involved or those which cross jurisdictional boundaries.

##### **Category 2**

Category 2 complaints are actions or behavior by the employee in disregard to department rules and regulations.

Category 2 complaints are normally investigated by Internal Affairs, but may be directed to the shift supervisor which the employee is assigned. The Operations Captain, in consultation with the Support Services Captain, Administration Sergeant and the shift supervisor, shall determine the appropriate investigative responsibility, and assign it accordingly.

1. Abuse of position by an employee
2. Insubordination
3. Failure to conform to laws which constitute a class 2 misdemeanor or less.
4. Ongoing performance problems. (This would include recurring work-related problems which have been addressed through counseling, documentation, performance improvement plans, and/or retraining)
5. There should be ongoing consultation with Operations Division Captain if performance problems persist. Once it is determined an internal investigation is needed, the affected employee will be notified.

### **Category 3**

Category 3 complaints are complaints against department employees that involve not only perceptual differences, but may constitute violations of department policies, procedures, or service(s). Examples of Category 3 complaints are speeding and courtesy.

The Operations Division Captain shall delegate the investigative responsibility of a Category 3 complaint to a supervisor, unless it constitutes a long-standing pattern. In those cases, the Operations Division Captain will consult with the Support Services Captain, Administration Sergeant and the shift supervisor to determine who should conduct the investigation.

Category 3 investigations shall be completed within 30 working days of the investigator after notification to the employee of the complaint. However, if the employee being investigated is on leave or absent during the 30 working day period the Operations Division Captain can extend the 30 working days by the amount of time the employee is unavailable. The reason for the extension must be documented.

The employee will be notified of the outcome of the investigation as follows:

1. Adverse Finding – Employee must receive the sanction (written reprimand, verbal reprimand, or counseling) Documentation of the sanction will be forwarded to the Operations Division Captain.
2. Non-Adverse Finding – Employee may be notified verbally or in writing and documentation shall be forwarded to the Operations Division Captain.

## **E. DUTIES OF THE OPERATIONS DIVISION COMMANDER**

The Operations Division Commander:

1. Shall, upon receipt of a complaint, contact the complainant and advise him/her that the matter is under investigation and that the complainant shall receive notice of the final disposition of the matter. The Operations Division Captain may advise the complainant of departmental procedures for investigation of misconduct complaints, where helpful.
2. Role of IA/OPS or the designated person
  - i. IA/OPS shall prepare the letter to the complainant following the conclusion of the investigation and the disposition of the complaint advising the person that the matter has been resolved.
  - ii. IA/OPS is responsible for the quality control of the complaint and administrative investigation process and shall:
  - iii. Review all final complaint investigations to ensure that they are consistent with the practices of the Department,
  - iv. Maintain records of the process,
  - v. Maintain the completed investigative and adjudication files in a secure, confidential manner,
  - vi. Conduct an annual audit of the process,
  - vii. Maintain statistical documentation regarding the process and prepare any overall reports consistent with the directions of the Chief of Police, and
  - viii. Alert the Department to any noticeable trends requiring that may require specific supervisory direction, policy review, or training evaluation.
3. Shall assign complaints to an investigating officer which may include but not limited to the Detective Sergeant, Administrative Sergeant, Shift Sergeant or either Captain in their respective division

where necessary.

4. Investigative procedures:
  - i. The employee assigned to conduct the administrative investigation shall:
  - ii. Evaluate the allegations contained in the Public Service Report, listen to the tape recording of the complainant, if available, and consult with the person accepting the complaint or learning of the allegation(s),
  - iii. Obtain all police reports, communications/dispatch records, MDT transmissions, video recordings, and other police documents,
  - iv. Determine the specific allegations of the complainant and identify any other possible agency violations, whether alleged by the complainant or not, and
  - v. Conduct interviews normally in the following sequence:
    - a. Complaining person
    - b. Other public witnesses
    - c. Agency witnesses
    - d. Accused employees; officers shall be given written notice of intended interview regarding allegations and, normally be allowed a reasonable period prior to the actual interview.
    - e. Shall provide confidential, written notification of the substance of the complaint to the employee under investigation.
5. May recommend to the Chief of Police that a complaint be referred to a prosecutor for charges, or to another agency for criminal investigation.
6. The investigating person will prepare the investigative report and submit it through the chain of command for adjudication and disposition. The investigator is a fact finder only and is not expected to make findings or recommendations.
7. The adjudication person will make a recommendation for the disposition findings for each allegation using the following classifications using the burden of proof of a preponderance of the evidence:
  - i. Sustained: there was a preponderance of evidence to prove the allegation
  - ii. Not Sustained: there was not sufficient evidence to either prove or disprove the allegation

- iii. Exonerated: the actions of the employee were consistent with the law and agency policies, rules, regulations and practice
- iv. Unfounded: the allegation did not occur
- v. Policy and/or training deficiency: the allegation occurred but was the fault of deficiencies in agency policy and/or training and cannot be accountable to the employee involved.
- vi. These disposition recommendations shall be forwarded through IA/OPS or the designated person for review and concurrence. The final authority for the disposition is the Chief of Police or his/her designee. Both IA/OPS and the Chief of Police are responsible to ensure that the investigation and the final recommendation are consistent with the investigation and the practice of the agency.
- vii. When allegations are sustained, the specific charges and processing will be conducted according to the personnel practices of the agency.
- viii. Shall perform any additional functions as deemed necessary.
- ix. The Department recognizes this position as the "Office of professional Standards" or OPS.

#### **F. INVESTIGATIONS OF POTENTIAL CRIMINAL ALLEGATIONS:**

1. When a criminal investigation is reasonably anticipated, the employee will be given the appropriate advisement to which he or she is entitled. Criminal investigations, where practical, will be referred to an outside agency. Any departmental investigation is not dependent on the conclusion of the criminal investigation and may continue simultaneously with external or other internal investigation(s). If appropriate, a departmental investigation may be suspended until completion of external or other internal investigation(s).
2. Whenever an employee is accused of criminal misconduct the employee's division Captain shall be notified. The division Captain shall notify the Chief.
3. If prior to or during an administrative investigation it appears the employee's actions or omissions may constitute criminal misconduct, the investigation shall be suspended and the matter shall be forwarded to the Chief to determine investigative

responsibility.

4. Another agency may conduct the investigation if the Chief decides the criminal allegation may cause adverse public reaction, have political implications, or create a potential conflict of interest. An administrative investigation may be initiated or resumed once it has been determined that it will not interfere with the ongoing criminal investigation.
5. Crime outside the department's jurisdiction: The Operations Division Commander will develop and maintain liaison with the involved agency and conduct the administrative investigation the same as it would have had the incident occurred within this department's jurisdiction.

## **G. DUTIES OF THE INVESTIGATOR**

The Investigator assigned:

1. May utilize all appropriate investigation procedures including, but not limited to, the use of blood draw, photographs, recordings, psychological exams, medical exams and any other accepted investigative device or technique.
2. Shall complete investigations of complaints in a reasonable period of time. Confidential status reports should be provided to the Operations Division Commander.
3. After completing the investigation, shall forward a confidential report to the Operations Division Commander stating relevant facts and statements for disposition of the complaint along with support.

## **H. INVESTIGATION**

1. Interviews should be conducted, where practical, while the employee is on duty.
2. All or part of an interview may be recorded via audio, video or other means.
3. The employee under investigation may request, at their own expense, a blood sample, urine sample, psychiatric exam, polygraph, and/or medical examination, if it is believed by the employee that such an examination would be beneficial.

## **I. INVESTIGATION OF ADMINISTRATIVE VIOLATIONS**

1. Prior to an internal interview concerning allegations of administrative violations, the employee under investigation shall be advised as follows:

*I wish to advise you that you are being ordered to answer questions as part of an official internal affairs administrative investigation by Aberdeen Police Department. You will be asked questions related to the performance of your official duties or fitness for office. You are entitled to all the rights and privileges guaranteed by the laws and Constitution of this state and the Constitution of the United States and the union contract between F.O.P. Lodge #4 Labor Council police union and the City of Aberdeen, including the right not to be compelled to incriminate yourself in a criminal case (if applicable).*

*Neither your statements nor any information or evidence that is gained by reason of such statements can be used against you as evidence in any subsequent criminal prosecution against you at trial, (except for perjury or obstruction of justice charges). However, these statements may be used against you in relation to subsequent departmental charges. I further wish to advise you that if you refuse to testify, provide untruthful responses or refuse to answer questions relating to the performance of your official duties or fitness for duty, you shall be subject to departmental charges that could result in your dismissal from this agency.*

2. Every employee is required to answer all questions completely, fully and truthfully. Questions by the investigator shall be as specific, narrow, and direct as is reasonably necessary to accomplish the purposes of the investigation. The investigator may reduce specific questions to writing. Receipt of specific written questions will be acknowledged by the employee whether or not the employee chooses to answer them.
3. Refusal to comply with a lawful order to meet or cooperate with the investigator or to answer questions after the statement in Section G:1 (above) has been read is a violation of departmental rules, is insubordination, and such refusal to comply shall subject the employee to discipline, up to and including termination.

## **J. COMMAND ACTION**

1. Upon review of the investigation materials, the Operations Division Commander may determine that further investigation is required and may order such investigation.

2. Upon completion of the investigation, the Operations Division Commander shall forward all relevant materials along with a summary and recommendations to the Chief of Police.

#### **K. CHIEF'S ACTION**

1. The Chief shall review the investigation report and supporting documents, and shall give a final disposition of the matter within the allotted time period for internal departmental purposes as follows:
  - a. Sustained: there was a preponderance of evidence to prove the allegation
  - b. Not Sustained: Insufficient evidence to either prove or disprove allegations.
  - c. Exonerated: the actions of the employee were consistent with the law and agency policies, rules, regulations and practice
  - d. Unfounded: Allegation is false, did not occur or not factual.
  - e. Policy and or Training deficiency: the allegation occurred but was the fault of deficiencies in agency policy and/or training and cannot be accountable to the employee involved.
  - f. When allegations are sustained, the specific charges and processing will be conducted according to the personnel practices of the agency.
2. The employee shall be given an opportunity to explain his/her actions to the Chief prior to the disposition of the complaint in accordance with City of Aberdeen disciplinary policy.
3. The Chief of Police shall make the final disposition as to the imposition of any disciplinary measures in accordance with City disciplinary policy.

#### **L. DOCUMENTATION**

1. All case files prepared under this internal investigation procedure shall be confidential documents of the department and City of Aberdeen. Access to an investigation file shall be limited to the investigator(s), the appropriate Division Commander(s), Chief of Police, Human Resources Director, City Attorney, and City Manager.

2. All disciplinary and/or corrective action, including administration of an oral reprimand, shall be documented and placed in the employee's file in accordance with City personnel policy.
3. After one year the employee may petition the Chief of Police to have a letter of reprimand removed from the employee's personnel file.

## **V. DISCIPLINE AND GRIEVANCE ISSUES**

- A. Discipline and grievance issues as they relate to employment with the City of Aberdeen and the Aberdeen Police Department are found in the City of Aberdeen Personnel Policies and FOP #4 labor council contract.
- B. Training as a form of discipline – Sometimes a member takes a course of action that causes him/her to come under the purview of disciplinary action. The supervisor should consider additional and/or remedial training whenever the action warrants.

## **VI. EARLY WARNING SYSTEM**

### **A. PURPOSE**

A comprehensive Personnel Early Intervention System is an essential component of good discipline in a well-managed law enforcement agency. The Early Intervention System is a supervisory tool and not a disciplinary process. The early identification of employees exhibiting symptoms of stress or other behavior that could pose a liability to the community, the Department, or the officer must be detected as soon as possible. When appropriate, an intervention consisting of a menu of remedial actions can increase agency accountability and offer employees a better opportunity to meet the agency's values and mission statement.

### **B. POLICY**

The Department will establish an Early Intervention System to identify agency employees who may require agency intervention efforts. The system should identify patterns of behavior that might be symptomatic that an individual employee requires an intervention. The system should review at a minimum:

1. Complaints
2. Incidents involving use of force
3. Shooting incidents
4. Use of sick leave

5. Preventable accidents
6. Domestic misconduct incidents
7. Civil litigation
8. Performance Evaluations
9. Commendations
10. Vehicle Pursuits
11. Assaults on officers as the victim
12. Injury reports for on duty incidents

## **C. DEFINITIONS**

### **1. Office of Professional Standards**

The Operations Division Commander shall be responsible for conducting investigations of employee misconduct allegations. The Department recognizes this position as the "Office of Professional Standards" or OPS.

### **2. Response to resistance.**

Efforts employed by an officer to compel compliance from an unwilling subject, to include but not limited to the use of hands on physical force, chemical, electronic, impact devices, firearms, and other weapons or means.

### **3. Excessive Use of Force:**

The application of an amount and/or duration of force greater than reasonably required to compel compliance of a non-compliant subject.

### **4. Potential-Risk Incidents:**

Actions that may result in injury to employees or the public, cause civil rights violations, increase the civil liability to the department, or cause this agency to lose public support and confidence in its ability to perform its duty in a professional manner.

### **5. Early Intervention System (EIS):** A RMS database management tool designed to identify officers whose performance exhibits potential problems, and then to provide interventions, usually counseling or training, to correct those performance problems. Early Intervention Systems have emerged as an effective

mechanism for enhancing accountability within law enforcement agencies.

## **D. PROCEDURES**

### **1. General**

- a. It is the duty of line supervisors to directly monitor the performance and behavior of personnel under their charge on a daily basis.
- b. The EWS is a tool to assist supervisory personnel in monitoring employee performance.
- c. Supervisory personnel shall be familiar with employee assistance referral procedures (City Personnel Policies) in response to personnel exhibiting behavioral problems with or without information provided through the EWS.

### **2. Reporting Procedures**

This agency's Office of Professional Standards (OPS) shall be responsible for establishing and administering the EWS and generating reports specified in this policy or as otherwise directed by the Chief of Police. OPS shall receive available copies of the following:

- a. Complaints lodged against employees in accordance with provisions of this Department's policy on investigation of employee misconduct, to include the following:
  - i. Complaints lodged by one employee against another;
  - ii. Summary disciplinary actions taken against an employee by any supervisor with or without a formal complaint;
  - iii. Complaints lodged by citizens against agency personnel;
  - iv. Incidents of domestic abuse;
  - v. Poor employee personal evaluations; and
  - vi. Administratively defined examples of improper actions and/or improper conduct, including formal disciplinary actions.
- b. Response to resistance - All use-of-force reports shall provide the following information:

- i. Name, rank, badge number, and assignment of the officer;
  - ii. Case number, date of the incident and the report;
  - iii. Name of subject(s);
  - iv. Location of the incident;
  - v. Nature of force and weapon used by the officer and the subject, and injuries sustained by the officer and subject, if any; and
  - vi. Narrative report of the incident.
- c. It will be the responsibility of the officer's chain of command, to recommend, in writing, the appropriate action to correct any deficiency that might be identified. The recommended actions could include the following:
- i. No further action required. The officer's actions that triggered the EIS have been thoroughly reviewed and do not indicate any concern for corrective action.
  - ii. Supervisory Counseling
  - iii. Periods of observation in the field by the first line supervisor
  - iv. Peer Counseling
  - v. Referral to the Employee Assistance Program
  - vi. Referral to psychological services
  - vii. Referral for remedial training
  - viii. Re-assignment
  - ix. Referral for anger management training
  - x. Referral for stress reduction training
  - xi. Other action as deemed appropriate
  - xii. Referral to the Chaplain program

**E. Process:** Once the recommended action plan is discussed with the officer, and approved by the chain of command, the intervention will be engaged, and reported back in writing to the entity charged with the responsibility of maintaining the system. A follow-up component will be established in the action plan to ensure the behavior that triggered the intervention is no longer a concern.

## **VII. PEACE OFFICER DOMESTIC VIOLENCE**

- A. PURPOSE:** Police agency employees come from the community. They may become involved in domestic matters. Because they are police/sheriff employees and their status is usually known to other persons in the community and they are representatives of the police/sheriff agency, the agency must take positive steps to ensure that these domestic matters do not adversely affect the employee's ability to perform, or compromise the conduct of agency missions, or create moral, operational or efficiency problems for the agency. The agency is dedicated to providing assistance for the employee during these critical times so that the employee may resolve the situation and return to being a productive member of the agency without these types of personal and family concerns.
- B. Policy:** It is the policy of this agency to deal directly and positively with any employee involved in acts of domestic misconduct. This policy offers a comprehensive, pro-active approach to domestic violence by police department employees with an emphasis on victim safety. Where incidents of domestic violence are alleged to have occurred, the Department will act quickly to protect the victim, arrest the perpetrator, and conduct parallel administrative and criminal investigations. The ultimate mission of the agency is to assist the employee to resolve these family/relationship problems, to ensure that these acts do not adversely affect the employee or the agency during the period of resolution, and to provide the agency with a safe work environment. The Department has a "ZERO TOLERANCE" toward domestic violence, and if an officer is found guilty in a court of law, the officer shall have his/her police powers revoked.
- C. DEFINITIONS:**
1. **Domestic misconduct:** The agency defines this type of conduct very broadly. This definition may be broader than State law, but it is intended to assure the continuation of positive performance within the agency by the involved employee and other members of the agency. A domestic relationship involves any employee who is involved in one of the following relationships with another party:
    - i. Spouse or former spouse;
    - ii. Is in a significant romantic relationship as defined by SD 25-10-3.2.
    - iii. Has a child or is expecting a child with the abusing party;

- iv. Parent and child, including a relationship by adoption, guardianship, or marriage;
  - v. Sibling, whether of the whole or half blood, including a relationship through adoption or marriage.
2. **Misconduct:** refers to any physical assault or battery, vandalism, stalking, intimidation, coercion, or criminal act against a party within this form of domestic relationship.
  3. **Collateral misconduct:** Any conduct by another member of the police agency to assist another agency employee in the continuation of the act of domestic misconduct. This would also include any actions designed to shield the employee or impair the ability of the agency to be informed of the domestic misconduct.
  4. **Service of court papers:** Any documents from a judicial proceeding, which are designed to assist in helping to resolve the domestic misconduct or curtailing specific actions by the parties, involved in the domestic misconduct.
  5. **Self-reporting:** It is the responsibility of the employee to provide the agency with specific notice whenever he/she is involved in any acts of domestic misconduct. This is specifically true whenever the employee is the subject of any judicial proceeding concerning these types of acts, whether the employee is the person complained of or the victim.
  6. **Administrative no-contact orders:** These are written orders by a supervisory employee, preferably Internal Affairs or Professional Standards, and served upon an agency employee designed to curtail any further domestic misconduct
  7. **Internal Affairs/Professional Standards:** Would include those persons designated with internal affairs responsibility in agencies that do not have full-time IA/Professional Standards positions.
  8. **Domestic Violence:** For the purpose of this policy refers to any act or pattern of violence between family or household members (threaten or actual) not done in defense of self or others, including but not limited to the following:
    - i. Bodily injury or threat of imminent bodily injury;
    - ii. Sexual battery;
    - iii. Physical restraint;
    - iv. Property crime directed at the victim;

- v. Violation of a court order of protection, or similar injunction; or
- vi. Causing the intentional death upon his/her partner as defined by 22-16-1 of South Dakota Codified Law.

9. Protection order refers to any injunction or other order issued by a court, including criminal or civil orders of protection, regardless of form, content, length, layout, or name (such as stay away, restraining, criminal, and emergency or temporary protection orders or injunctions), issued for the purpose of preventing the following:

- i. Violent or threatening acts against another person
- ii. Stalking or harassment of another person
- iii. Contact or communication with another person
- iv. Physical proximity to another person

**D. PROCEDURES:** While prioritizing the safety of victims, this policy is designed to address prevention through hiring and training practices, provide direction to supervisors for intervention when warning signs of domestic violence are evident, institutionalize a structured response to reported incidents of domestic violence involving officers, and offer direction for conducting the subsequent administrative and criminal investigations. The agency shall take immediate action when notified of any act of domestic misconduct involving an employee of this agency.

**1. When the incident occurs within the jurisdiction of this agency:**

- i. Assign the call for response by two uniformed officers and a supervisor.
  - 1) Obtain needed medical assistance
  - 2) Address the immediate safety of all parties involved
  - 3) Secure the scene and preserve evidence
  - 4) Note all excited utterances, admissions and/or incriminating statements
- ii. The supervisor will assure that any violence is curtailed, all parties are protected, and any required medical assistance is provided.
- iii. The supervisor shall ensure that all evidence is properly recorded and collected.

- iv. Once the incident is contained, the supervisor shall call for a response by an agency's domestic violence investigator, if the agency has such an assignment.
  - v. The criminal investigator, or the supervisor if no investigator responds, is responsible for the criminal investigation, if warranted. The supervisor of the investigating officer shall respond to oversee the conduct of the investigation.
  - vi. The supervisor shall notify the Chief, Internal Affairs as well as the officer's Division Commander. The supervisor will relieve the officer of his/her service weapon and any other firearms the victim requests removed from the scene for safekeeping.
  - vii. Internal Affairs at the earliest moment.
  - viii. The decision to arrest an agency employee involved in domestic misconduct shall be the responsibility of the on-scene supervisor with consultation with Internal Affairs. When probable cause exists, the employee shall be arrested and processed the same as any civilian.
- 2. The supervisor, domestic violence investigator, or, if not done by these persons, the Internal Affairs person shall take immediate steps to ensure that there is no continuation of the domestic misconduct.**
- i. Ensure that victim advocate assistance is offered and provided when necessary.
  - ii. Ensure that an immediate safety plan is discussed with the victim of the domestic misconduct and assist in any manner to ensure this continued safety.
- 3. Internal Affairs shall be responsible for:**
- i. Issuing an administrative no-contact order to the agency employee if warranted.
  - ii. Ensuring that the appropriate assignment decision is made regarding the agency employee.
  - iii. Ensuring that the criminal investigation has been conducted in a reasonable manner.
  - iv. Developing and/or implementing any necessary safety plan to ensure employee safety.
  - v. Conducting the administrative investigation of the incident and any collateral employee misconduct. The agency shall be listed as the complainant.
- 4. When the incident involving domestic misconduct occurs in a jurisdiction other than that of this agency:**

- i. The agency person notified of this incident shall immediately notify Internal Affairs
  - ii. Internal Affairs shall make immediate contact with the involved agency to ensure that our agency is kept on notice of the progress of the investigation.
  - iii. Internal Affairs shall ensure that the employee and the persons involved are aware that the agency will assist them during this process.
  - iv. Internal Affairs is responsible for determining whether an administrative no-contact order is warranted and will be responsible for serving this upon the agency employee, when necessary.
5. Whenever a peace officer from another jurisdiction is arrested for domestic violence the Shift Supervisor or Division Captain will contact that agency's Department head and request a representative respond to seize any firearms belonging to the respective agency.
- i. The Shift Supervisor will have all officers involved in responding to the domestic violence incident complete a detailed law incident report and forward a copy to the Chief of Police for his/her review.
  - ii. The Shift Supervisor will be responsible for ensuring the victim is informed of the following:
    - 1) The availability of a domestic violence advocate;
    - 2) Confidential transportation to a safe house, shelter, or other location that ensures victim safety;
    - 3) Procedures for obtaining a protection order and victim's rights; and
    - 4) Expected judicial process.
  - iii. When responding to a domestic violence incident where the victim is a Department employee or peace officer from another jurisdiction, standard domestic violence response and investigation procedures should be followed.
6. **The Shift Supervisor shall debrief all officers who responded to the "officer involved domestic" incident of:**
- i. Confidentiality issues of the involved parties;
  - ii. Officers share information on an only "need-to-know" basis;
  - iii. Assignments and reporting requirements; and
  - iv. Victim post assistance duties.
  - v. Arrest warrants charging a peace officer with a domestic violence crime or a violation of a protection order, or other court order shall be served by no fewer than two (2) officers, one being senior to the rank of the officer being served.
  - vi. After the incident, a member of the Command Staff will be

designated as a point of contact for the victim to ensure all appropriate information is disseminated as required to the victim.

**7. Service of court orders:**

- i. Internal Affairs shall facilitate, when requested, the service of any court orders upon agency employees.
- ii. Internal Affairs shall be responsible for the determination regarding any assignment limitations involving the employee who is subject to the court order.

**8. Training**

The department will adhere to a zero-tolerance policy towards police officer domestic violence and will not tolerate violations of the policy.

- i. The Department shall collaborate with domestic violence victim advocacy organizations to use as resources for training Department employees when available.
- ii. Periodic in-service training on domestic violence and stalking may be held to review policies and discuss their implementation.
- iii. Ongoing training techniques including roll-call, FTO, ride-along, and training bulletins will be utilized to regularly reinforce standards of effective response protocol.
- iv. South Dakota statutes require that all law enforcement officers be trained on domestic abuse during the initial academy and subsequently once every four (4) years.

**9. Pre-Hire Intervention**

- i. A thorough background investigation will be conducted on all potential employees and will screen for a history of elder, child, or domestic violence abuse.
- ii. Each officer will have a psychological screening that will focus on indicators of violent or abusive tendencies.

## **E. DELINEATED RESPONSIBILITIES**

### **1. Department Responsibilities**

The Department may refer a member, their partners, and/or other family members to the “Employee Assistance Program” provided by the City, or to another certified program as a non-punitive avenue to help prevent an act of domestic violence from occurring.

A disclosure on the part of any officer, intimate partner or family member to any member of the department that an officer has personally engaged in domestic violence will be treated as an admission or report of a crime and shall be investigated both administratively and criminally.

### **2. Supervisors Responsibilities**

- i. Supervisors shall document inappropriate aggressive behaviors of a police employee and forward such information to the Chief of Police.
- ii. Supervisors shall be cognizant of and document any pattern of questionable behavior, on or off duty, where employees may be exhibiting signs of possible domestic violence including but not limited to the following:
  - a) **Aggressiveness`**
    - i) Excessive and/or increased use of force on the job
    - ii) Stalking and inappropriate surveillance activities
    - iii) Unusually high incidences of physical altercations and verbal disputes
    - iv) Citizen and fellow officer complaints of unwarranted aggression and verbal abuse
    - v) Inappropriate treatment of animals
    - vi) On or off-duty officer injuries
  - b) **Domestic violence-related issues**
    - i) Monitoring and controlling any family member or intimate partner through such means as excessive phone calling
    - ii) Stalking any intimate partner or family member
    - iii) Discrediting and/or disparaging an intimate partner
  - c) **Deteriorating work performance**

- i) Tardiness
- ii) Excessive absences
- iii) Alcohol and drug abuse

iii. When the supervisor notes a pattern of problematic behavior (as detailed above), the supervisor shall:

- a) Address the behaviors through a review of other contact with the officer and document all contacts
- b) Forward written reports capturing the behaviors to the Chief through the chain of command in a timely manner to determine discipline as warranted.

#### **iv. Employee Responsibilities**

- a. Sworn and non-sworn members are encouraged and entitled to seek confidential assistance from the Department to prevent a problem from escalating to the level of criminal conduct against an intimate partner.
- b. Employees with definitive knowledge of abuse and/or violence involving fellow employees must report such information in a timely manner to their supervisor. Failure to report such information may result in disciplinary action being taken.
- c. Employees who engage in threatening, harassing, stalking, surveillance or other such behavior designed to interfere with cases against fellow employees will be subject to investigation, disciplinary action and/or criminal charges.
- d. An employee who is the subject of a criminal investigation or is subject to a protection or restraining order related to domestic violence, regardless of jurisdiction, is required to report him/herself to his/her supervisor immediately and provide notice of all court proceedings in a timely manner.

### **F. POST INCIDENT PROCESSES**

#### **1. Criminal Decisions**

A criminal investigation will be conducted by another law enforcement agency with concurrent jurisdiction regarding either a sworn or non-sworn Department employee involved in a domestic violence incident as a suspect/defendant. The employee will be given all rights afforded under law.

## 2. Administrative Functions

- i. **A separate parallel administrative investigation will be** conducted in a domestic violence incident involving a Department employee.
- ii. The internal investigation will follow the procedures set forth in this chapter.
- iii. When an officer with this Department has been arrested, the officer's immediate supervisor will take the following action:
  - 1) Inform the officer he/she is on paid administrative leave;
  - 2) The officer will hand over:
    - a) All Department identification cards;
    - b) Badge;
    - c) All firearms issued by the Department;
    - d) All impact weapons issued by the Department;
    - e) O.C. Spray; and
    - f) Any other equipment requested by the Department.
  - 3) Advise the officer this incident will be referred to the Chief and the officer will be notified in writing when an internal investigation is opened for administrative purposes; and
  - 4) Any questions regarding the incident should be directed to his/her Division Commander or the Chief of Police.
- iv. When an officer is a suspect in a domestic violence incident or a recipient of a protection or restraining order pertaining to domestic violence the following will occur:
  - 1) The officer will be relieved of his/her duty weapon and any other firearms belonging to the Department; and
  - 2) The officer will be placed in an administrative work position which does not require police duties.
- v. When a sworn employee is convicted of a crime of domestic violence that brings in the provisions of 18 U.S.C. 922(g)(9) law, the employee shall be terminated as not being able to function completely

within the job classification for which s/he was hired.

- vi. The Chief of Police will make all employment decisions based on the findings of the criminal investigation, internal investigation, or both.