

Assessment of the Springfield, Massachusetts Police Department



**POLICE EXECUTIVE
RESEARCH FORUM**

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Executive Summary

In April 2018, the city of Springfield contracted with the Police Executive Research Forum (PERF) to conduct a review of the Springfield Police Department’s internal investigations processes and several related matters. This review includes the following components:

1. **A review of SPD’s Internal Investigations Unit.** Specifically, PERF was asked to compare SPD’s standards and practices to a set of national guidelines produced by the U.S. Department of Justice in 2008.¹
2. **A review of Springfield’s Community Police Hearing Board.** This board was created in 2010 in order to increase community input in the Police Department’s handling of complaints against officers.
3. **Recommendations for computer software systems to manage Internal Affairs and Early Intervention System cases.** In addition to improving the handling of citizen complaints, automated data collection is essential to development of an Early Intervention System (EIS). Many police departments nationwide have created an EIS, which monitors indicators of potential problems with officers’ behavior, such as multiple traffic accidents, excessive use of sick leave, community complaints, etc. The purpose of an EIS is to provide early detection of relatively minor issues with an officer’s performance, so supervisors can determine whether there is a need for counseling or retraining of the officer, in order to prevent minor issues from escalating to the level of significant misconduct.
4. **Other findings and recommendations.**

This report presents PERF’s findings and recommendations resulting from the study, summarized below:

1. Review of SPD’s Internal Investigations Unit



Note: For this component of PERF’s study, PERF was asked to compare SPD’s internal affairs standards and practices to national standards.² PERF was not tasked with reviewing case files of internal affairs investigations; rather, PERF was asked to compare SPD’s internal affairs policies and practices with a set of model guidelines that were developed by the U.S. Department of Justice, in order to determine whether SPD policies and practices are consistent with national best practices. *The*

¹ “Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice.” DOJ Office of Community Oriented Policing Services. <http://ric-zai-inc.com/Publications/cops-p164-pub.pdf>.

² Ibid.

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numerical references and headings in this report, such as “1.0 Intake” below, refer to the COPS Office recommendations.

This Executive Summary highlights some of the most significant issues and COPS Office guidelines. A more complete analysis is contained in the text of this report.

1.0 Intake

1.1 What a complaint is and who may file one

This COPS guideline states that “every complaint from the public [must] be received and evaluated,” adding that “Because complaints can literally be anything from irrational statements to clear reports of criminal corruption, intelligent evaluation of each complaint at intake is crucial.”

Findings: In accordance with the COPS guidelines, SPD requires that every complaint from the public be accepted and evaluated. However, PERF’s review revealed that SPD does not currently have an agency-wide *policy* governing how complaints are received and investigated.

- **Recommendation:** SPD should create a department-wide policy outlining the process for receiving and investigating complaints, from intake to final disposition. The policy should clearly define the roles and responsibilities of various members of the agency when handling a complaint, including how to receive and process a complaint, who is responsible for investigating the complaint, and the process by which various types of complaints are investigated and adjudicated.

1.2 How a complaint can be transmitted and what forms it can take

This COPS guideline provides that complaints should be accepted orally, in writing, or other means “without unnecessary burden,” and states that “the public has a reasonable expectation that an agency presented with a complaint will act in good faith to accept it.”

Findings: SPD’s process by which a complaint of officer misconduct can be generated is fairly comprehensive. However, these practices are not currently reflected in policy.

- **Recommendation:** SPD should list the various methods by which a complaint can be generated in the Complaint Reception and Investigation policy described in section 1.1 above.

1.4 Availability of complaint forms or other means of filing complaints

The guideline calls on agencies to accept complaints in a variety of formats, such as online or at police facilities, and provides that police “should accommodate all languages spoken by a substantial proportion of residents of the region.”

Findings: Consistent with COPS guidelines, complaint forms are readily accessible at all SPD facilities. These instructions are also available on SPD’s website, and are provided in both English and Spanish.

- **Recommendation:** SPD should create an electronic version of the complaint form that can be completed and submitted online via the department website.
- **Recommendation:** In addition to providing instructions on the agency website, SPD should also ensure there is signage in both English and Spanish at each patrol station informing community members of how to file a complaint.

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1.5 Dissuading complainants

This COPS guideline states that a complaint process “should not discourage, dishearten, or intimidate complainants or give them cause for fear.”

Findings: PERF interviews of Springfield police personnel found that first-line supervisors and mid-level managers at SPD could benefit from additional training with regard to accepting complaints.

- **Recommendation:** SPD’s Complaint Reception and Investigation policy should specify that agency personnel should not discourage individuals from filing a complaint. The policy should also state that employees who in bad faith attempt to dissuade a complainant from filing a complaint will be subject to discipline.
- **Recommendation:** SPD’s Internal Investigations Unit should develop training on the importance of appropriately receiving and documenting complaints.

1.6 Tracking complaints

This guideline states that “every complaint should be tracked through final disposition.”

Findings: SPD’s current system to document and track complaints consists of a Microsoft Access database maintained by the IIU. SPD is not currently using any software specific to Internal Affairs.

- **Recommendation:** SPD should adopt a case management system designed to track complaints and investigations against personnel, and to provide the agency with automated alerts regarding officers who may be in need of counseling, coaching, or training. An Early Intervention System (EIS) case management software system will allow complaints to be documented by patrol supervisors and tracked throughout the investigation process. Section III of this report (p. 53-65) provides information on developing and implementing an EIS.

1.7 Complaint acknowledgments

This COPS guideline provides that complainants should receive a written acknowledgment of their complaint, with a reference number, a synopsis of the complaint, and the identity and contact information for the investigator or other responsible person.

Findings: Currently, SPD IIU investigators send a confirmation letter to complainants and follow up via phone to acknowledge a complaint. However, PERF learned that community members have sometimes expressed frustration over not being regularly updated about the status of their complaints.

- **Recommendation:** SPD should adopt protocols to provide regular notifications to complainants with updates on the investigation.

1.8 Auditing complaint intake

This guideline states that police agencies “should conduct regular audits to verify that complaints are being taken properly and to ensure that all employees are adhering to agency rules and standards.”

Findings: There is currently no mechanism at SPD to conduct regular audits to verify that complaints are being properly handled.

- **Recommendation:** SPD should establish an inspections unit that would be responsible for conducting routine checks of the complaint investigative process. This unit could also be utilized

by the Commissioner to inspect or audit all aspects of the agency. See page 71-72 for recommendations on creating a staff inspections component.

2.0 Classification of Complaints

2.4 Holding administrative complaints in abeyance during criminal proceedings

This guideline states that every police agency “should create a protocol for determining how to proceed with an administrative complaint while a criminal case based on the same facts is pending.”

Administrative hearings are often held in abeyance in order to avoid interference with a criminal investigation. However, the COPS guidelines notes that “the time delay has a negative impact on the memory and availability of witnesses” for the administrative investigation. “Moreover, a lengthy delay undermines public trust.”

Findings: SPD currently has protocols in place to hold administrative investigations in abeyance until the criminal proceedings are complete. This is a good practice and ensures that compelled statements from the administrative investigation do not taint the criminal investigation.

However, waiting for the completion of a criminal investigation can unnecessarily delay the department in discharging an employee in cases where an administrative investigation would likely result in termination. In these cases, SPD should attempt to move the administrative investigation forward even while the criminal investigation is pending.

- **Recommendation:** In cases where a violation is so egregious that it would likely result in termination of the officer, SPD should consider moving forward with the administrative investigation immediately, even while the criminal investigation is in progress.

3.0 Investigation

3.1 “Complete investigation” defined

This COPS guideline details the differences between a preliminary investigation, which determines whether a complaint should be investigated further, and a complete investigation, which “includes all relevant information required to achieve the purpose of the inquiry.”

Findings: SPD is in compliance with this guideline. SPD fully understands the requirements of a thorough internal affairs investigation, and any decision not to proceed with a complete investigation is made by the Internal Investigations Unit Lieutenant or another senior department leader.

- **Recommendation:** If a complaint is vague or there is not enough information for a thorough investigation, SPD should conduct an “Administrative Inquiry” to determine whether the case can be investigated as either a Preliminary Investigation of Employee (PIE) for less serious allegations or a Special Order (SO) for more serious complaints. If the Commissioner finds that there is not enough information about the complaint, the case can be referred back to the IIU for follow-up. If it is determined from the administrative inquiry that the case does not need to be investigated further, the case can be closed. However, the results of the administrative inquiry should still be documented in the IIU case management system.

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3.5 Cases Internal affairs should relegate

This guideline provides that less serious allegations of misconduct can be investigated at the unit level rather than by an Internal Affairs bureau.

Findings: In the Springfield Police Department, less serious allegations of misconduct are typically classified as a Preliminary Investigation of Employee (PIE) and are investigated by the accused officer's chain of command. This practice is generally consistent with the COPS Office guideline. However, there appeared to be little understanding by supervisors about how to handle a PIE investigation, because there is no standard protocol or consistent training to investigate these complaints.

- **Recommendation:** SPD should develop clear procedures for the investigation of PIEs and should provide training to all officers at the sergeant level and above who handle these investigations. These procedures should also be documented in policy.
- **Recommendation:** Although not all complaints are formally investigated by the IIU, the IIU Lieutenant should be aware of and should provide some oversight of all citizen complaints and internal complaints handled by SPD. Investigations that are designated as PIEs should be reviewed and tracked by the IIU lieutenant to ensure they are being properly handled.

3.8 Electronic recordings of interviews

This COPS Office guideline states that electronic recording of statements by accused employees and witnesses "is the best way to avoid interpretive errors in recounting statements."

Findings: SPD does not currently use any type of audio or electronic recording for its interviews.

- **Recommendation:** SPD should audio-record all administrative interviews with accused and witness officers. If the complaint moves to a formal hearing, the agency can transcribe the interview so the officer's testimony will be available in written form. Investigators should also audio-record interviews of other witnesses if practicable. If interviews are recorded and transcribed, there will be no need for the accused officer to write a departmental report, as the interview notes and transcript can serve as the officer's statement.
 - **Note:** In discussions with SPD regarding this recommendation, staff members expressed a potential concern about whether audio-recording during the interview process would be impacted by Massachusetts' two-party consent laws. However, if SPD policy states that administrative interviews are to be audio-recorded, any refusal by an officer to conduct the interview would be a violation of departmental policy, given that officers are compelled to provide a statement during an administrative investigation. SPD should inform officers that they will be required to participate in an audio-recorded interview, and that they could face additional administrative charges if they refuse to participate. The Massachusetts State Police currently audio-records internal affairs interviews, and SPD can consider contacting Massachusetts State Police Internal Affairs for additional insight on audio-recording interviews.
- **Recommendation:** After reviewing a case and conducting enough of an investigation to interview the accused officer, IIU investigators should send a letter notifying the accused officer of the allegations. The letter should set a time and place for the interview, advise the officer about who they may have present with them for the interview, inform the officer that the interview will be audio-recorded, and outline any other applicable protocols.

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3.9 Standards of investigative report quality

This COPS guideline states that “the documentation of investigations must be thorough, complete, and as comprehensive as reasonably necessary. Using standardized forms or formats helps in quality control....”

Findings: Based on PERF’s observations, the reports generated by SPD’s IIU investigators appear to be in compliance with the COPS guideline. SPD’s IIU uses a standardized format to document Special Order investigations. However, PIE investigative files may not consistently follow that format.

- **Recommendation:** All investigative reports, including those for investigations conducted in the field as PIEs, should be reviewed by the IIU lieutenant to ensure consistency and thoroughness.
- **Recommendation:** The IIU should develop a checklist outlining the components of a high-quality internal affairs report. The checklist should be utilized by sergeants or other supervisors who are conducting PIE investigations.

3.11 Agencies should consider using Compliance Audits

This guideline recommends compliance audits, which are “live tests to determine whether policies are being followed. For example, a Compliance Audit of an agency’s policy to document all complaints could be done by having someone call in a complaint, and later see if the complaint was documented.”

Findings: SPD does not currently conduct compliance audits of its complaint system.

- **Recommendation:** As discussed in section 1.8, SPD could consider establishing a staff inspections unit that would be responsible for handling audits. In addition to these compliance audits, the unit could conduct quality assurance inspections of all aspects of the agency. See Section IV, p. 71-72 for specific recommendations on establishing a staff inspections unit.

3.12 Response to, and review of, lethal-force investigations

This COPS Office guideline calls for an immediate response to the scene and investigation of all officer-involved shootings, in-custody deaths, and serious uses of force (as defined by the agency). An administrative review, regardless of whether there is any complaint, can help an agency identify changes in policy, procedures, training, or equipment that could improve the agency’s response to similar incidents in the future.

Findings: SPD responds to the scene of any critical incident and initiates an investigation by the appropriate unit. Any officer-involved shooting or in-custody death is investigated by both the IIU and the Major Crimes Bureau. The IIU identifies any tactical issues in its report, and it is up to the officer’s chain of command to acknowledge and address these issues.

While SPD is following good practices for providing immediate investigative review of critical incidents, SPD does not currently utilize a review board to critically analyze use-of-force incidents.

- **Recommendation:** PERF recommends conducting a formal review of all officer-involved shootings, in-custody deaths, hospitalizations of prisoners, and serious use-of-force incidents (electronic control weapon, baton, OC spray), by establishing a performance review board. The formal review of these incidents, conducted as a matter of course, will provide valuable opportunities to identify lessons for training, gaps in tactics, any need for additional equipment to be provided to officers, or any need for policy changes, regardless of whether the incident involved any misconduct.

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(Such review boards function similarly to how the National Transportation Safety Board thoroughly investigates every civil aviation accident in order to identify any changes in practices that could help to prevent future accidents.)

3.13 Lethal-force investigations: interviews and evidence

This COPS Office guidelines states that “the process of investigating an agency member’s use of lethal force requires an extraordinary degree of attention to capturing and recording the statements of each participant and witness independently, accurately, and as soon as conditions allow.”

Findings: SPD personnel advised PERF that it is current practice to separate witness officers after a lethal-force incident and to prevent them from discussing the incident until conclusion of the investigation. However, this practice is not formalized in policy.

- **Recommendation:** After a lethal-force incident, investigators must ensure that witness officers are separated as soon as possible, and members of SPD should be ordered not to discuss the incident until after all interviews have been concluded. This requirement should be stated in SPD policy.

4.0 Mediation, Adjudication, and Disposition

4.1 The four basic resolution categories

This COPS Office guideline provides that “the findings in completed investigations should result in one of four resolutions: 1. sustained or founded; 2. not sustained or not resolved or unresolved; 3. exonerated; or 4. unfounded.”

Findings: SPD utilizes the four resolution categories outlined in the COPS guidelines, and IIU investigators have a good understanding of the various dispositions. However, it appears that SPD’s Community Police Hearing Board (CPHB) does not have the same understanding or has not historically used the same terms and categories. Due to a lack of familiarity with these terms, there may also be confusion in areas of SPD other than the IIU about the consistent use of these resolution categories.

- **Recommendation:** These four dispositions and their proper usage should be clearly defined in policy to ensure that everyone in the department, as well as the CPHB, thoroughly understands them. SPD should institute training for all supervisors to ensure there is consistency with regard to how to close a case and how to determine findings based on these four categories. The CPHB should also receive training on these terms and their appropriate usage.

4.3 Proposed reporting relationship of the head of Internal Affairs

This COPS Office guideline states that “the head of Internal Affairs should preferably report directly to the agency head.”

Findings: SPD’s IIU is currently comprised of three sergeants and one lieutenant. The lieutenant reports to a captain, who in turn reports directly to the Commissioner. There is no deputy chief in the command chain, and no one in IIU has a direct line of access to the Commissioner.

- **Recommendation:** SPD should establish a direct line of communication from the IIU Lieutenant to the Commissioner, and communication should occur on a regular basis. This would provide consistency in how these cases are handled, without the need for an additional level of review.

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4.4 Standards for adjudication

This COPS standard provides detailed guidance on minimum standards for adjudicating disciplinary cases, including the following:

1. The burden of proof is on the agency.
2. The standard of proof is a preponderance of the evidence.
3. The standards of evidence are those of administrative law, not criminal law.
4. No presumptions of truth are made regarding facts in dispute.
5. No presumptions are made regarding witness credibility: all persons are equally credible unless an objective, fact-based evaluation of the witness's capacities, testimonial coherence, and other relevant and demonstrable factors justify otherwise.
6. Conclusions are logically deduced from the evidence.

Findings: SPD personnel told PERF that due to a lack of consistent and clear agency policy, adjudication decisions can sometimes be a challenge at SPD. The agency currently has various policies and memos that set forth administrative rules, but officers have no clear rules governing their conduct. In addition, PERF learned that when an accused officer's chain of command receives the investigative file to make a preliminary finding, there are currently no specific charges or policy violations listed, making it difficult to make decisions regarding adjudication.

- **Recommendation:** SPD should review and develop a revised set of policies and procedures for officer conduct and establish a dedicated in-service training program to explain the policies and procedures.³ The agency should train all personnel in the captain rank and above who are responsible for recommending adjudication of these cases, to ensure there is a clear and consistent understanding of how to make these decisions.
- **Recommendation:** SPD should revamp its process so that when the investigative file is sent to the accused officer's command chain for review, the file describes the potential departmental violations and provides clear definitions of the various disposition categories (sustained, not sustained, unfounded, and exonerated). The applicable charges and violations should be included in a cover memo with the investigative file to assist reviewers with determining the disposition.
 - **SPD Action Taken:** SPD is already in the process of updating this cover memo to ensure that it contains applicable charges and policy violations. This will allow each reviewer (captain, deputy chief, and hearing board) to document their preliminary finding so that the Police Commissioner can review their input on each charge when making a determination regarding case disposition.
- **Recommendation:** The IIU Lieutenant should provide commanding officers with training on what departmental charges would apply in various situations, and an understanding of the potential findings of an investigation.

4.5 Penalty assessment and the use of a penalty matrix

This COPS Office guideline recommends the use of a "penalty matrix" that lists penalties or ranges of discipline for various types of misconduct. A matrix can help ensure that discipline is fair, consistent,

³ PERF is currently working with SPD to review its policies and procedures to ensure certification with the Massachusetts Police Accreditation Committee (MPAC). As part of this project, PERF will identify other state police practices for SPD to use as a guide when developing policy.

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and predictable. The guideline provides that a matrix “should not be applied inflexibly,” and the discipline should be based on the totality of the circumstances, including aggravating and mitigating factors.

Findings: In the SPD, the IIU currently provides historical information to the Commissioner regarding prior penalties for specific types of offenses in a given case, and these are considered when determining discipline. SPD is currently examining the use of a matrix system to ensure that disciplinary action is consistent with prior practices.

- **Recommendation:** SPD should develop a matrix system to ensure that disciplinary action is fair and consistent. See Appendices A and B for samples of matrix systems used in Madison, WI, and Austin, TX, Police Departments.

4.6 The advantages of mediation and the conditions of its use

The COPS guideline states that “voluntary mediation conducted by a neutral facilitator, in lieu of investigation and adjudication, permits resolution of minor complaints that are usually not easily resolved through investigation.”

Findings: SPD does not currently have a mediation program in place.

- **Recommendation:** SPD should adopt a mediation process to resolve minor complaints and strengthen police-community relations. To be effective, mediation should only be an alternative for less serious complaints, and officers should be limited in the number of complaints eligible for mediation over a specific period. Mediation sessions must be led by a formally trained mediator.⁴

4.9 Keeping investigations confidential

This guideline states that “internal affairs investigations should be closed to the officer and the public [while they are pending]. Nonetheless, the agency head should be fully informed of the progress of internal investigations and should regularly communicate the status of an investigation to the press and general public to the full extent permitted by law.”

Findings: SPD personnel advised PERF that the department currently has no confidentiality requirement for internal affairs investigations. It is important that investigations be kept confidential in order to preserve the rights of the accused officer during the course of an internal affairs investigation.

- **Recommendation:** Witnesses and witness officers interviewed in an internal affairs investigation should be informed that the investigation is confidential in nature, and that they must not discuss the content of the investigation or interview with others.
- **Recommendation:** SPD should institute clear policy and protocols governing confidentiality of internal affairs investigations. The agency should cite this policy during interviews and inform officers that if they do not maintain confidentiality, they may be charged with a departmental violation.

4.10 Guidelines for selecting and retaining Internal Affairs investigators

This guideline provides that “to make certain that Internal Affairs units benefit from high-quality and experienced employees, agencies should consider utilizing promotional policies that recognize service in

⁴ Jack McDevitt and Amy Farrell (2007), *Enhancing Community Review of the Springfield Police Department*

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Internal Affairs as productive and useful for advancing an officer's career.... Tours in Internal Affairs should be limited to fixed terms."

Findings: The individuals in SPD's IIU are handpicked by their commanding officers and approved by the Police Commissioner. In accordance with COPS guidelines, SPD generally selects officers with prior investigative experience, and all of the investigators in the IIU are sergeants. However, SPD does not have any fixed term for how long officers are assigned to the IIU.

- **Recommendation:** SPD should consider imposing a set term that an officer may serve in the IIU. Three to five years could be a general guideline. Implementing such a guideline would ensure that investigators do not develop biases or become emotionally drained after extended assignments. Importantly, assignments to the unit should be staggered to ensure that the unit has experienced investigators at all times.

2. A Review of Springfield's Community Police Hearing Board

Findings: Springfield's Community Police Hearing Board (CPHB) was created in 2010 to provide civilian input into the investigation of citizen complaints by SPD.

After a complaint has been investigated by the IIU or the officer's chain of command, but before any recommendation has been made regarding charges or alleged policy violations, the CPHB reviews the results of the investigation. The CPHB may decide that further investigation is needed, and send the case back to the IIU.

If the CPHB considers the complaint to be legitimate, it may hold a public hearing in which the city's Law Department presents the case against the officer, and the accused officer's lawyer defends the case. Both sides can present evidence and call witnesses. The CPHB then makes its recommendations for sustaining or not sustaining each allegation of misconduct. The Police Commissioner makes the final determination regarding the charges and any discipline to be imposed.

The CPHB is a valuable mechanism to provide accountability regarding the Police Department's handling of complaints. However, it appears that board members could benefit from additional training on fairly judging police conduct. PERF observed that there are no formal protocols for the process followed by the board, and board members do not receive adequate training on how to execute their role.

Furthermore, when the board reviews an investigation for purposes of determining whether it will proceed to a hearing, board members do not have any information detailing the alleged policy violations or an initial assessment by experienced police officials of the conduct in question.

- **Recommendation:** The CPHB should be comprised of nine or ten members, three of whom should be former law enforcement investigators with relevant police experience. The chair of the board should be a retired judge or a respected attorney with trial experience. The board should sit in panels of three designated members, one of whom is a retired law enforcement

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officer, to review the investigative file, applicable charges, and command chain preliminary determination and analysis.⁵

- **Recommendation:** The city of Springfield should appoint a Civilian Oversight Coordinator (COC) who would be responsible for the day-to-day administration of the CPHB, such as scheduling board meetings and following up on board requests. The COC would serve as the liaison between the board and other officials, including the Mayor, the Law Department, and representatives from SPD.⁶ The Coordinator also would participate in the initial CPHB review.
- **Recommendation:** A three-member panel of board members, as well as the Civilian Oversight Coordinator, should meet every two weeks to review new cases. Each of these panels should have at least one member with prior law enforcement experience.
- **Recommendation:** On a yearly basis, all members of the CPHB should meet to review SPD policy and procedures that may contribute to police misconduct and recommendations for improvement. The CPHB should be empowered to recommend changes in policy or training to reduce officer misconduct.
- **Recommendation:** The city of Springfield should develop a clear mission statement for the board with clear written procedures to follow, and SPD should provide in-depth training for the CPHB on these protocols.
- **Recommendation:** At the completion of the IIU investigation and prior to an initial review by the Community Police Hearing Board, the IIU, in conjunction with attorneys from Labor Relations, should issue a cover memo detailing the applicable charges based on the allegations and the investigation. The applicable charges and the investigative file should then be provided to the accused officer's command chain for review. The officer's chain of command should then make a preliminary determination and provide a written analysis in support of that determination. The investigative file, cover memo, and chain of command preliminary determination and analysis should then be provided to the board for the initial review.
- **Recommendation:** The three-member panel should make a recommendation to the Commissioner regarding a determination for each applicable charge. The CPHB should use the same case dispositions as defined by IIU: sustained, not sustained, exonerated, and unfounded. A formal charge letter should be provided to the accused officer after the Commissioner makes a final determination. If, after the charge letter has been issued to the accused officer, the officer does not dispute the charges, there should be no reason to proceed with the full hearing. If the officer does not dispute the charges, the CPHB should make a recommendation regarding discipline, and then the case should go directly to the Commissioner to make a final decision regarding discipline.

⁵ If the board is comprised of nine members, the chair could also serve as a member of one of the three-member panels. If the board is comprised of ten members, the chair would not have to serve on one of the three-member panels.

⁶ Jack McDevitt and Amy Farrell (2007), *Enhancing Community Review of the Springfield Police Department*

- **Recommendation:** The CPHB should be required to draft a written opinion following the hearing that clearly details its findings of fact and conclusions based on the relevant legal standards.

Oversight, Accountability, and Citizen Involvement

In the past, the City of Springfield utilized a Board of Police Commissioners to manage and control the police department. In 2005, a state-run financial control board dissolved the Board of Police Commissioners and created the single position of Police Commissioner. The Police Commissioner is appointed by the mayor and has complete authority over the police department.

PERF is aware that the Springfield City Council has voted to establish a new civilian police commission that would have authority over key issues such as hiring, firing, disciplining officers, and policy development.

Advocates of a civilian board of police commissioners argue that a board would provide a higher level of civilian oversight of the police department in Springfield. However, Springfield's Community Police Hearing Board already has the authority to review citizen complaints, make recommendations, and conduct hearings regarding the complaints.

A number of cities across the nation have Boards of Police Commissioners that provide general oversight of police departments. This can be a worthwhile method of providing civilian input into major decisions about a city's approach to controversial issues, such as the role of the police in immigration enforcement. However, under the legislation approved by the Springfield City Council, the Board of Police Commissioners would have far greater authority to run key aspects of the Police Department on a day-to-day basis, including "the appointment, management, and control of the members and employees of the Police Department," as well as "the regulation, government, and discipline of such members and employees," and all "rules and regulations for the government and discipline of the Police Department."

PERF believes that this system would be impractical to the daily running of the department, particularly considering the fact that police chiefs make important decisions about critical incidents on a daily basis, but the legislation approved in Springfield would require only that the Board of Police Commissioners meet "at least once a month."

PERF believes that the current system with a police commissioner appointed by the mayor is preferable to reinstating a Board of Police Commissioners. Unlike a board of civilian commissioners, a police commissioner is directly responsible for the daily work of the Police Department and can be held accountable for actions taken by the Police Department. A five-member board of civilians could result in *less* accountability, because no one person could be held responsible for police operations.

PERF believes that SPD needs two kinds of oversight – citizens providing input, and an executive who has the responsibility and authority to hold members of the Police Department accountable. Citizen input can be provided through Springfield's existing Community Police Hearing Board. And accountability can be provided by a strong Police Commissioner who retains responsibility for hiring, firing, discipline, and policy and procedures.

- **Recommendation:** The City of Springfield should maintain the management system currently in place in the police department, utilizing a sole police commissioner who has the experience, education, skills, and authority necessary to lead and manage a police agency, with civilian input provided by the Community Police Hearing Board.

3. Computer Software Systems to Manage Internal Affairs and Early Intervention System Cases.

The use of Early Intervention Systems (EIS), especially for large and medium-size police agencies, has emerged as a widespread practice in police personnel management. The underlying concept of an EIS is that serious incidents of police officer misconduct often do not erupt unexpectedly. Rather, such significant events are often preceded by a number of minor past incidents or concerning patterns of behavior. An EIS is designed to help agencies detect these potential areas of concern and address them through training, counseling, or other non-punitive measures before more serious misconduct occurs.

SPD currently does not have an Early Intervention System (EIS). However, SPD leaders understand and acknowledge the need for a more comprehensive approach to early intervention.

SPD leaders will need to consider several factors as they develop a comprehensive EIS. An EIS requires computer systems that can automatically track a range of factors that may be indicators of problematic behavior, such as uses of force by an officer, citizen complaints against the officer, any lawsuits citing the officer, excessive use of sick leave, disciplinary actions against the officer, and issues cited in the officer's performance evaluations. An EIS may track as few as a half-dozen indicators or as many as 20 or more indicators.⁷

- **Recommendation:** SPD should continue to research best practices and consult with vendors to learn about different Internal Affairs software programs. Computer systems that track internal affairs cases can also track other factors used in an EIS.
PERF has provided SPD with information on the benefits of EIS, as well as how to build agency support for EIS, design an EIS, and implement the EIS.

4. Other Findings and Recommendations

PERF identified the following additional areas for improvement:

- **Recommendation:** SPD should develop a Standard Operating Procedures manual specific to the IIU, so that the unit will have a clear understanding of all internal affairs processes and operations. This document should clearly outline the role of the IIU lieutenant, sergeants, and administrative personnel; timelines of how a case should proceed; what forms should be used, and other relevant processes.

⁷ See *Civil Rights Investigations of Local Police: Lessons Learned*. Police Executive Research Forum (2013). Pp. 16-18.

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- **Recommendation:** SPD should ensure that all newly-assigned IIU investigators are sent to a specialized, reputable internal affairs school or program within their first six months of assignment. SPD could consider contacting the National Internal Affairs Investigators Association⁸ for information on training opportunities, including the organization's yearly conferences.
- **Recommendation:** SPD should develop an in-house training program specific to the investigation of officer misconduct that all supervisors responsible for investigating complaints must attend. Sergeants should receive annual refresher training on the complaint investigative process, and new sergeants should receive training on the process upon promotion.
- **Recommendation:** SPD should provide training in connection with any policy changes or updates that are implemented within the agency. These trainings should be done through roll calls, informal briefings, or regularly scheduled in-service training sessions.
- **Recommendation:** SPD should develop policy stating that when an officer is being interviewed during an investigation or at a CPHB hearing, the accused officer should not be carrying a firearm. The accused officer's firearm should be secured during these meetings, and this should be stated in the letter that is sent to the officer, notifying the officer about the complaint.
- **Recommendation:** SPD should establish a staff inspections unit to conduct quality assurance inspections of all aspects of the agency. Administrative inspections of each SPD component should occur at least every three years or as required by the Police Commissioner.

Inspections would examine areas such as SPD facilities, administration, files, information systems, personnel, operations, and reporting practices. In addition, the staff inspections unit could conduct audits of complaint intake to verify that complaints are being taken properly, or compliance audits to determine whether agency policies regarding documentation of complaints are being properly followed.

PERF is working with SPD to review its policies and procedures to ensure certification with the Massachusetts Police Accreditation Committee (MPAC). If SPD were to establish a staff inspections unit, this unit could oversee the accreditation process.

Moving Forward

By commissioning this review, SPD has indicated a strong willingness to strengthen its complaint reception and investigative process. SPD has already taken a number of positive steps toward improvement, and should look to the recommendations in this report as it continues these efforts.

⁸ <https://www.niaia.org/resources>

Introduction

In April 2018, the city of Springfield contracted with the Police Executive Research Forum (PERF) to conduct a review of the Springfield Police Department's (SPD's) Internal Investigations Unit (IIU). **PERF was tasked with evaluating the strengths and weaknesses of the IIU's standards and practices, as compared with the recommendations of the United States Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) *Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice*.**⁹ (PERF was not tasked with reviewing case files of internal affairs investigations.)

In addition, PERF was tasked with conducting a process review of Springfield's Community Police Hearing Board (CPHB) and SPD's command staff, as well as providing software recommendations for its electronic reporting and archiving process. PERF conducted its review with assistance from McGuire Woods LLP, a law firm with expertise in law enforcement matters.

Scope of Services

The "scope of services" statement that PERF provided to SPD consisted of six main tasks:

1. **Stakeholder Interviews** of SPD personnel, leaders of police employee associations, and members of the city's Community Police Hearing Board to understand the department's current internal investigation processes.
2. **Policy Review and Assessment** to review, and compare to progressive practices, all SPD policies, procedures, general orders, rules and regulations, and training curricula that are relevant to the operation of the IIU and the investigation of complaints against department personnel.
3. **Assessment of Case Handling** to review and evaluate complaint intake procedures, classifications, complaint forms, case management systems, and the complaint investigative process.
4. **Investigator Selection and Training Assessment** to examine the IIU investigator selection process and training provided to investigators and patrol supervisors.
5. **Process Review of the City's Community Police Hearing Board and Police Department's Command Staff** (as it relates to handling internal affairs investigations)
6. **Software Recommendations for SPD's Electronic Reporting and Archiving Process** to assist SPD with integrating its existing software packages with the department's Early Intervention System.

Methodology

PERF used the following methods to collect information for its review of SPD:

Interviews and on-site observations: The PERF team conducted site visits to Springfield in July and September, 2018. PERF conducted interviews with the following SPD employees and other stakeholders:

⁹ "Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice." DOJ Office of Community Oriented Policing Services. <http://ric-zai-inc.com/Publications/cops-p164-pub.pdf>.

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- Police Commissioner
- SPD command staff, supervisors, and rank and file members
- Internal Investigations personnel
- Former Internal Investigations personnel, currently reassigned to other duties
- SPD civilian staff
- Leadership of police employee associations
- Members of the Community Police Hearing Board.

Policy Review: PERF reviewed the following SPD policies:

- Internal Investigation Unit General Guidelines
- Rule 35: Internal Investigating Unit
- Rule 32: Charges and Hearings
- Departmental correspondence regarding:
 - Police officer-involved shootings
 - Use-of-force investigations
 - Communications between the Police Department and the Community Police Hearing Board
 - Suggested language to add to chief’s suspension letters, 90-day letters and hearing notices
 - Disciplinary hearing procedures
- Springfield Police Department Procedure for Investigation & Disposition of Citizen’s Complaints
- Complaint Review Policy

This report presents the findings and observations that emerged from PERF’s review, with recommendations on how SPD can strengthen its processes, policies and practices to improve its operations. The recommendations contained in this report are based on progressive policing practices.

About the City of Springfield and the Springfield Police Department

Springfield is the third-largest city in Massachusetts. The city is 33.1 square miles in size with an estimated 2017 population of 154,758.¹⁰ As of 2017, 58% of the city’s residents were white, 21% were Black or African American, 0.6% were American Indian and Alaska Natives, 2.1% were Asian, and 4.2% were Two or More Races. In terms of ethnicity, 43.2% identified as Hispanic or Latino.¹¹

The Springfield Police Department is comprised of more than 500 sworn and non-sworn personnel.

A major new development affecting the city and the Police Department occurred in August 2018, when the MGM Springfield, a casino and entertainment resort, opened in the city. The casino is expected to attract thousands of individuals to the city, and SPD is preparing for increased security and other public safety needs. Preparations have included SPD’s creation of a Metro Unit based in a newly opened substation, to which 40 SPD officers have been assigned. In addition, the Gaming Enforcement Unit, comprised of Massachusetts State Police troopers and SPD officers, will be responsible for patrolling the

¹⁰ U.S. Census Bureau, <https://www.census.gov/quickfacts/springfieldcitymassachusetts>

¹¹ Ibid.

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boundary of the MGM Springfield.¹² SPD is carefully monitoring the casino's impact on crime in Springfield.

¹² George Graham, August 15, 2018, "Patrolling MGM Springfield: Rollout of police Gaming Enforcement Unit highlights public safety operations for casino's grand opening," https://www.masslive.com/news/index.ssf/2018/08/public_safety_operations_for_o.html

Section I. Review of the Springfield Police Department's Internal Investigations Unit

A key aspect of PERF's review of the Springfield Police Department (SPD) was to conduct an assessment of the department's Internal Investigations Unit (IIU).

At the request of the department, PERF evaluated the strengths and weaknesses of the IIU as compared to the recommendations outlined in the DOJ's Office of Community Oriented Policing Services (COPS Office) *Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice* (hereafter referred to as the "COPS Guidelines").¹³

PERF interviewed SPD's IIU staff and examined policies and practices regarding SPD's complaint intake, classification, investigation, mediation, adjudication, and disposition. As specified in PERF's contract, this report outlines each section of the COPS Guidelines and assesses the extent to which SPD is in compliance with the guidelines. It then presents recommendations for how SPD can strengthen its policies and practices on internal affairs investigations.

Before getting into the specifics of the COPS Guidelines, we provide a broad overview of the current complaint investigative process at SPD.

Overview of Complaint Investigative Process at SPD

The current process for complaint intake at SPD is as follows. When a complaint is filed against an officer, it first goes to the Commissioner via an internal memo written by the officer's supervisor. The commissioner then makes a decision as to how the complaint will be classified and investigated. The complaint is classified as either a Preliminary Investigation of Employee (PIE), or a Special Order (SO). In general, lower-level offenses, such as rudeness, are classified as PIEs, and more serious offenses, such as an excessive use of force, are classified as SOs. Complaints that are classified as SOs are investigated by the IIU, and complaints classified as PIEs are sent to the captain in the accused officer's chain of command for investigation. A PIE investigation is usually conducted by the officer's direct supervisor.

Special Order (SO)

In the case of an SO, the complaint is assigned to the IIU for investigation. The purpose of IIU investigations is simply to gather facts. Investigators do not make any findings with regard to a disposition.

When the investigation is complete, IIU investigators generate a report summarizing the information they found. If the complaint was made by a community member, the investigative file is sent to members of the Community Police Hearing Board (discussed in more detail in the following section), which reviews the file to determine whether the case has merit and will proceed to a hearing. After that, the file is sent to the captain in the accused officer's chain of command for review, followed by the

¹³ "Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice." DOJ Office of Community Oriented Policing Services. <http://ric-zai-inc.com/Publications/cops-p164-pub.pdf>.

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deputy chief, and finally to the Commissioner. The Commissioner makes a final decision regarding case closure and any applicable discipline.

Preliminary Investigation of Employee (PIE)

In the case of a PIE, the accused officer's captain receives a copy of the order to investigate the case, and typically assigns it to a sergeant for investigation. After the investigation is complete, the captain writes a report based on the findings. The report is then sent to the IIU, which creates an investigative file based on the report. If the complaint was made by a citizen, it follows the same process described above and is first sent to members of the Community Police Hearing Board (CPHB) for review. After that, the file is sent back to the captain, followed by the deputy chief in the accused officer's chain of command, and finally to the Commissioner for case closure and any applicable discipline.

Community Police Hearing Board

Springfield has a Community Police Hearing Board (CPHB) that is charged with reviewing and hearing all citizen complaints. The board is comprised of seven members of the community who are selected by the mayor. As described above, the CPHB plays an integral role in the citizen complaint review process. Following the completion of an investigation, a subset of the CPHB, usually two to three members, reviews the investigative file to determine whether they believe the accused officer has engaged in misconduct. If the board members require additional information to determine whether the complaint has merit, they can also request additional information from investigators. The members then make a decision as to whether the case should proceed to a full hearing.¹⁴

During the hearing, an attorney from the city Law Department presents the case against the accused officer, and the attorney for the accused officer defends the case. Both sides may present evidence and call witnesses. Following the hearing, the board deliberates to determine whether to sustain or not sustain each of the alleged violations of misconduct. The case is then sent to the Police Commissioner, who will make the final decision as to the charges.¹⁵

This is only a general overview of SPD's complaint investigative process and the Community Police Hearing Board. Further information and details about the Community Police Hearing Board and hearing process are provided in Section II (see page 47).

A. SPD's Compliance with COPS Standards and Guidelines for Internal Affairs

SPD requested that PERF assess the strengths and weaknesses of its IIU as compared to the recommendations outlined in the DOJ's Office of Community Oriented Policing Services *Standards and*

¹⁴ If the CPHB determines that the complaint does not have merit, it would not proceed to a hearing, and would likely be not -sustained or unfounded.

¹⁵ The CPHB only conducts hearings for complaints initiated by citizens. If a complaint is an internal administrative complaint (i.e., made by another member of the agency), and the accused officer disputes the charges, the case will go to an internal hearing board authorized by the Police Commissioner. This internal hearing board would often be overseen by a deputy chief.

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*Guidelines for Internal Affairs.*¹⁶ The COPS guidance takes the form of 38 recommendations in four major areas, numbered from 1.0 to 4.10.

In the following section, we outline the guidance from the COPS publication on each point, and discuss the extent to which SPD’s current practices are in adherence with each guideline. We then provide recommendations as to how SPD can improve its internal affairs policies and practices.

1.0 Intake

1.1 What a complaint is and who may file one

COPS Guideline: *Each agency should require that every complaint from the public be received and evaluated to determine the nature of the agency’s response to the complaint...The complaint process from intake to final disposition should be clear to all involved, and should include at least a general description of the categories the agency uses to group complaints and the procedures for handling each category. The descriptions and procedures should be in writing and easily accessible to the public.*

Findings: In accordance with COPS guidelines, SPD requires that every complaint from the public be received and evaluated. However, PERF’s review revealed that SPD does not currently have an agency-wide policy governing *how* complaints are received and investigated. Although SPD has some policies and procedures specific to the IIU, they appeared to be outdated, and in some cases inconsistent with one another. For example, department policy *Rule 32 Charges and Hearings* states that “aggravated persons telephoning complaints shall be advised that only by filing a written form in person can uniform procedural follow-up be assured.” This is in conflict with current SPD practice, which allows for the intake of complaints in a variety of forms, including by telephone.

- **Recommendation:** SPD should create a department-wide policy outlining the complaint reception and investigative process from intake to final disposition. The policy should clearly define the roles and responsibilities of various members of the agency when handling a complaint, including how to receive and process a complaint, who is responsible for investigating the complaint, and the process by which various types of complaints are investigated and adjudicated. The Complaint Reception and Investigation policy should also discuss the role of the Community Police Hearing Board (CPHB). **A template with specific examples of what this policy should include is provided in Section IV (see page 67-68).**
- **Recommendation:** In addition to creating this policy, SPD should include a general description of the complaint investigative process, including procedures for handling various types of complaints, on the agency website, so this information will be easily accessible to the public.

1.2 How a complaint can be transmitted and what forms it can take

COPS Guideline: *To the extent permitted by law, a complaint should be received whether presented orally, in writing, or in some other reasonably intelligible form. The point is to make it as simple as*

¹⁶ “Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice.” DOJ Office of Community Oriented Policing Services. <http://ric-zai-inc.com/Publications/cops-p164-pub.pdf>.

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reasonably possible for anyone, including an arrestee, to present a complaint without unnecessary burden...

Nonsupervisory employees to whom a complaint is made should be required to summon a supervisory employee to receive the complaint...A supervisor receiving a complaint against another supervisor of similar rank should, when practical, summon a superior officer to receive the complaint.

Findings: The process by which a complaint of officer misconduct can be generated at SPD is fairly comprehensive. There are a number of ways in which community members may file complaints, including the following:

- They may fill out a form that can be obtained from the police station or other public building as well as online.
- They may bring a complaint in person at the police station.
- They may report a complaint over the phone.
- Complaints may be made anonymously.

In addition to citizen complaints, a complaint of officer misconduct can also be generated internally from within SPD. This is consistent with best practices and ensures that both citizens and SPD personnel are not limited in the means by which they are able to make a complaint. However, these practices are not currently reflected in policy.

- **Recommendation:** SPD should document the various methods by which a complaint can be generated in the Complaint Reception and Investigation policy described in section 1.1 above. In addition, this policy should state that if an officer is approached by a complainant, the officer should attempt to direct the complainant to a supervisor to receive the complaint.

1.3 Receiving complaints at agency facilities

COPS Guideline: *An agency should receive complaints at any of its facilities ordinarily accessible to the public regardless of the assignment of the employee complained against. Where an agency can arrange to have complaints received and properly processed by local government officials at locations other than police facilities, the agency should do so. Such arrangements should include at least an understanding among the local officials that they need to promptly present the complainant information to the agency's Internal Affairs.*

Findings: SPD is in compliance with this guideline. SPD receives complaints at any of its facilities, as well as via mail. In addition, the IIU is located off-site, so community members can feel more comfortable talking to investigators at a location outside the department. SPD also allows for complaints to be submitted at City Hall, as well as various other locations throughout the city.

1.4 Availability of complaint forms or other means of filing complaints

COPS Guideline: *A public complaint form, or other means to file a complaint, should be available upon request at all units and patrol stations ordinarily accessible to the public. Information about how to file a complaint should be available at municipal offices and other appropriate identified locations. If an*

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agency has a web site, an electronic version of the complaint form should be on the site, capable of being filled out and transmitted electronically...Whenever practicable, a complainant should be provided with a copy of the initial intake complaint so that the complainant can verify that the facts as initially reported were accurately and completely received...

The complaint process should accommodate all languages spoken by a substantial proportion of residents of the region. Similarly, brochures explaining the procedure for the filing and investigation of complaints should be available in those languages wherever a complaint can be made. There should be signage in English and those other languages at each patrol station or other unit informing persons of their right to make a complaint and the availability of personnel to assist in the process.

Findings: Consistent with COPS guidelines, complaint forms are readily accessible at all SPD facilities, along with instructions on how to file a complaint. These instructions are also available on SPD's website, and are provided in both English and Spanish. The complaint form is available for download from the agency's website. However, complainants are instructed to print the complaint form and either mail it or submit it in person. There is currently no mechanism to submit the complaint form electronically via the agency's website.

- **Recommendation:** SPD should create an electronic version of the complaint form that can be completed and submitted online via the department website. This will make complaint submission more easily accessible to the community, and will allow for more efficient intake of complaints.
- **Recommendation:** In addition to providing instructions on the agency website, SPD should also ensure there is signage in both English and Spanish at each patrol station informing community members of how to file a complaint.

Tucson, AZ, Police Department has a complaint form that can be completed and submitted directly from the department's website. The form can be viewed at: <https://www.tucsonaz.gov/police/complaints>.

1.5 Dissuading complainants

COPS Guideline: *The public complaint process should not discourage, dishearten, or intimidate complainants or give them cause for fear. Unless required by law, a complaint need not be under oath or penalty of perjury. Unless required by law, no threats or warnings of prosecution or potential prosecution for filing a false complaint should be made orally or in writing to a complainant or potential complainant. Practices such as running warrant or immigration checks on complainants at intake solely because they are complainants should not be tolerated.*

Employees who in bad faith attempt to dissuade complainants from filing a complaint or who attempt to convince a complainant to withdraw his or her complaint should be subject to discipline. However, where an agency has an officially sanctioned and regulated mediation process available as an alternative to the complaint process, a good-faith offer to a complainant to enter the alternative process is encouraged.

Findings: Although SPD practice does not explicitly discourage or intimidate community members from filing complaints, interviews indicated that first-line supervisors and mid-level managers at SPD could benefit from additional training with regard to accepting complaints. At times, there appeared to be a lack of consistency among supervisors as to how complaints were handled. For example, SPD personnel

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told PERF that some supervisors may be handling complaints informally (e.g., telling the complainant they will handle the complaint personally), as opposed to going through the formal complaint process.

- **Recommendation:** SPD's Complaint Reception and Investigation policy should specify that agency personnel should not discourage individuals from filing a complaint. The policy should also state that employees who in bad faith attempt to dissuade a complainant from filing a complaint will be subject to discipline. Discouraging people from filing complaints undermines fairness and impartiality, which are essential to ensuring the integrity of complaint investigations, trust in the process, and legitimacy in the outcomes.
- **Recommendation:** SPD's IIU should develop training on the importance of appropriately receiving and documenting complaints, and not discouraging individuals from filing a complaint. This training should be provided to all SPD personnel and included as a reminder during each subsequent year's in-service training.

1.6 Tracking complaints

COPS Guideline: *Every complaint should be tracked through final disposition. The tracking system should be automated, where feasible, and capable of capturing in separate data fields information regarding the complaint important for case tracking. The tracking system should alert investigators and those responsible for management of the complaint process when deadlines are about to expire or have expired.*

Findings: SPD's current system to document and track complaints consists of a Microsoft Access database maintained by the IIU. SPD is not currently using any software specific to Internal Affairs. In addition, the current system only tracks Special Order (SO) investigations that are handled by the IIU, and not Preliminary Investigation of Employee (PIE) investigations which are handled in the field by supervisors.

- **Recommendation:** SPD should adopt a case management system specifically created to track complaints and investigations against personnel, as well as provide the agency with automated alerts on officer performance who may be in need of counseling, coaching or training. An Early Intervention System (EIS) case management software system will allow complaints to be documented by patrol supervisors and properly tracked throughout the investigation process. **Part of the scope of PERF's review was to provide recommendations on implementing such a system. See Section III on page 53-65 for more information.**
- **Recommendation:** Once SPD has adopted this tracking system, every complaint should be documented in the system and should receive an IIU investigation number, regardless of whether the complaint is being handled by the IIU or by supervisors in the field. Any time a complaint is made, a supervisor should be able to enter the complaint into the case management system, allowing for proper tracking by the IIU.

1.7 Complaint acknowledgments

COPS Guideline: *A written acknowledgment of a complaint or a receipt should be provided to the complainant in person or by mail or e-mail promptly and should be documented in a retrievable manner.*

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It should include a reference number, complete synopsis of the complaint, and the identity of the investigator or other responsible person and his or her contact information...

The complainant should be permitted to review for accuracy any oral complaint reduced to writing by any agency personnel. The complainant should receive a copy of any such complaint.

Findings: Currently, SPD IIU investigators send a confirmation letter to complainants and follow up by telephone to acknowledge a complaint. The letter includes a reference number, a synopsis of the complaint, and contact information for the investigator, and provides information on how to arrange a follow-up interview. This is consistent with the COPS guideline and ensures that the complainant knows that the complaint has been documented completely and accurately. However, during interviews with City Council members, PERF learned that community members have sometimes expressed frustration about not being regularly updated about the status of their complaints.

- **Recommendation:** SPD should adopt protocols to provide regular notifications to complainants with updates on the investigation. The complainant should be informed of SPD's union-negotiated 90-day timeframe for investigations, and the investigator should contact the complainant at least once during the 90-day period to provide an update on the investigation. Once the investigation is complete, the investigator should inform the complainant of whether the charges were sustained and if disciplinary or corrective action was taken.

1.8 Auditing complaint intake

COPS Guideline: *As a routine matter, an agency should conduct regular audits to verify that complaints are being taken properly and to ensure that all employees are adhering to agency rules and standards.*

Findings: There is currently no mechanism at SPD to conduct regular audits to verify that complaints are being properly handled. It is important that SPD establish a means to test whether its reporting systems are functioning as designed and whether employees are appropriately following procedures.

- **Recommendation:** SPD should establish an inspections unit that would be responsible for conducting routine checks of the complaint investigative process. This unit could also be utilized by the Commissioner to inspect or audit all aspects of the agency. **See Section IV, p. 71-72 for further information and recommendations on creating a staff inspections unit.**

1.9 Complaints and lawsuits

COPS Guideline: *Complaints that are legal claims against the agency or any of its personnel for on- or off-duty conduct under color of authority should be coordinated with the agency's or city's risk management unit and the attorneys representing and defending the city in civil matters. Any civil lawsuit or civil claim filed against a municipality, agency, or law enforcement personnel for misconduct on duty or off duty under color of authority should be handled as a complaint.*

Agencies should consider creating rules requiring employees who are the subject of lawsuits alleging off-duty misconduct under color of authority to report the lawsuit without delay to their Internal Affairs unit or their commanding officer.

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Findings: SPD's IIU has a close working relationship with the city Law Department and is made aware of any lawsuit brought against the agency. The IIU coordinates with the Law Department to handle these cases as complaints. In the event of a lawsuit against the city, the Law Department notifies the IIU to request relevant records, and the Law Department redacts those records if necessary. The IIU investigation proceeds even if there is a lawsuit against the city. According to IIU personnel, investigators are able to contact the Law Department to request information regarding the civil case.

- **Recommendation:** In addition to communicating with the city Law Department, SPD policy should state that if an officer is subject to a lawsuit pertaining to official duties that the agency may not be aware of, the officer is required to report the lawsuit to their chain of command without delay.

2.0 Classification of Complaints

2.1 Criminal complaints

COPS Guideline: *As soon as is practicable, complaints alleging possible criminal misconduct of an agency member should be separated, classified as a criminal complaint, and handled accordingly. A decision not to classify a possibly criminal complaint as such should be approved by the unit commander of Internal Affairs or its equivalent or the agency head or designee according to protocols agreed upon with the District Attorney. There should be an active administrative investigation of any matter that is also being pursued as a criminal investigation.*

Because agencies typically have rules making it an act of misconduct to commit a crime, agencies should consider creating rules requiring officers arrested or named as a principal to a crime to report that to their agency's Internal Affairs or to their commanding officer.

Findings: Criminal and administrative investigations are handled separately at SPD. When a matter is criminal in nature, a case is simultaneously opened with the Major Crimes unit and notification is made to the District Attorney's Office. The IIU waits for the Major Crimes unit to complete its investigation, and IIU receives the file from that investigation. The IIU does not interview the accused officer if there is a criminal case open. This is sound procedure and avoids any issues that could taint the criminal case.

- **Recommendation:** In accordance with COPS guidelines, SPD should adopt a rule requiring officers arrested or named as a principal to a crime to report it to the IIU or to their commanding officer. This rule should be stated in policy.

2.2 When criminal prosecution is declined

COPS Guideline: *An Internal Affairs administrative investigation should be opened to gather facts and determine whether there is sufficient evidence to take disciplinary employment action against an employee who is under investigation for a criminal matter. The declination by a prosecutor to proceed criminally or a dismissal of charges or a not guilty judgment or verdict should not lead to a termination of an administrative investigation, given the nature of prosecutorial discretion and the differing standard of*

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proof (beyond a reasonable doubt) and admissibility of evidence in criminal matters in contrast to civil liability or administrative proceedings (preponderance of the evidence).

Findings: Current SPD practices are in compliance with this guideline. The DA's office advises SPD as to whether a case will be accepted or not accepted for prosecution. If a case is not accepted for prosecution, SPD proceeds with an administrative review of the incident. Similarly, a not-guilty verdict in a criminal investigation would not lead to the termination of the administrative investigation.

2.3 Internal administrative complaints

COPS Guideline: *A complaint made by an agency employee alleging criminal conduct of another agency employee should be promptly received and processed as a complaint by Internal Affairs. However, an employee's report of another's violation of administrative policies should be handled according to the policies of the agency, which could in many cases reasonably involve a process other than a complaint.*

Findings: SPD is in compliance with this guideline. PERF learned that all complaints of officer misconduct, whether generated by a citizen or within the SPD, are reviewed by the Commissioner, who determines how the complaint will be assigned for investigation. If an internal complaint against personnel is made, SPD has processes in place to either handle the matter as a complaint or take alternative approaches, such as retraining the accused officer.

If an internal complaint is found to be sustained, and the officer disputes the charges, the Commissioner establishes an internal hearing board to hear the case, which would usually be overseen by a deputy chief and comprised of other sworn officers. The Commissioner would then make a final decision regarding case disposition and discipline.

2.4 Holding administrative complaints in abeyance during criminal proceedings

COPS Guideline: *Each agency should create a protocol for determining how to proceed with an administrative complaint while a criminal case based on the same facts is pending.*

...It is often the desire of the prosecutor that the investigations be consecutive out of concern that compelled statements in the administrative investigation, if not handled carefully, may taint the criminal investigation. On the other hand, consecutive investigations can prejudice the administrative investigation...and a lengthy delay undermines public trust and confidence that the agency is efficient and is taking speedy action to remedy police misconduct...If an agency does conduct consecutive rather than concurrent investigations, the agency should keep the complainant informed as to the progress of the investigations on a regular basis.

Findings: SPD currently has protocols in place to hold administrative investigations in abeyance until criminal proceedings are complete. In cases where an officer is being investigated criminally, investigators ask the officer to waive the 90-day time limit for internal investigations while the criminal investigation is in progress. If the accused officer agrees to waive the 90-day time limit, investigators proceed with a limited investigation but wait to interview the accused officer until the criminal investigation is complete. This is a good practice and ensures compelled statements from the investigation do not taint the criminal investigation. However, waiting for the completion of a criminal

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investigation can unnecessarily delay the department in discharging an employee in cases where an administrative investigation would likely result in termination. In these cases, SPD should make all attempts to move the administrative investigation forward.

- **Recommendation:** In cases where a violation is so egregious that it would likely result in termination of the officer, SPD should consider moving forward with the administrative investigation, even while the criminal investigation is in progress. This will allow SPD to complete the administrative process and, if termination is recommended, to act on the recommendation promptly.

3.0 Investigation

3.1 “Complete investigation” defined

COPS Guideline: *A preliminary investigation should encompass an effort to gather key statements or evidence if reasonably attainable. The goal of a preliminary investigation is to determine if the complaint should be further investigated and, if so, by whom.*

A “complete investigation” is one which includes all relevant information required to achieve the purpose of the inquiry...One should expect of a complete investigation that a competent adjudicator will be able to make a finding without resorting to surmise, prejudice, or assumption of facts at issue. A complete investigation should take place where the allegations, if true, would likely result in formal discipline. Likewise, a complete investigation should be considered if it appears from a preliminary review that an agency’s policy, standard, or training may be a factor in unintended consequences apparent in the complaint. Any decision not to proceed to a complete investigation should be made by the commander of Internal Affairs with a written explanation included in the file.

Findings: SPD is in compliance with this guideline. The agency fully understands the requirements of a thorough internal affairs investigation, and any decision not to proceed with a complete investigation would be made by the Lieutenant who oversees the IIU or another senior department leader authorized by the Police Commissioner. Currently, preliminary investigations are done informally by the IIU Lieutenant or police commissioner’s designee. However, PERF learned that sometimes these investigations are not documented if they do not proceed to a complete investigation as either a Special Order (SO) or a Preliminary Investigation of Employee (PIE).

- **Recommendation:** If a complaint is vague or there is not enough information for a thorough investigation, SPD should conduct an “Administrative Inquiry” to determine whether the case can be investigated as either a PIE or an SO. If the Commissioner finds that there is not enough information about the complaint, for example, the case can be referred back to the IIU for follow-up. If it is determined from the administrative inquiry that the case does not need to be investigated further, the case could be closed. However, the results of the administrative inquiry should still be documented in the IIU case management system and assigned a case number for tracking purposes. After any administrative inquiry, the IIU lieutenant should discuss the findings with the Commissioner to determine whether additional action should be taken. This could

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include assigning the complaint for further investigation as a PIE or SO, or possibly handling the issue through retraining or counseling.

3.2 Frequent or chronic complainants

COPS Guideline: *Some complaints are lodged by frequent complainants whose previous complaints have uniformly been found to lack a basis in fact. These complaints should not be summarily closed. A preliminary investigation, however, may be satisfactory to establish that the current complaint lacks a basis in fact or is a duplicate of facts alleged in another complaint. The complaint should be closed with a finding that there was no basis of fact or that it was a duplicate, after review by the Internal Affairs commander.*

Findings: SPD has a mechanism in place to identify frequent or chronic complainants. If a complaint is received from such an individual, the IIU conducts a review to determine whether there is legitimacy to the complaint before closing the case. However, PERF learned that sometimes these cases are not formally documented if they do not proceed to a complete investigation.

- **Recommendation:** In cases where a preliminary review reveals that a complaint lacks a basis in fact, SPD should formally document the case in its case management system prior to closure, and should document the findings of the review.

3.3 Special needs of criminal investigations

COPS Guideline: *A criminal investigation of an agency employee, particularly one involving a felony or crime of moral turpitude, is so serious that an agency should consider extraordinary measures to ensure that the investigation is as thorough and independent of conflicts of interest as possible. Ideally, an Internal Affairs team trained in criminal investigations would handle such cases and answer only to the agency head or designee. If Internal Affairs does not have a criminal investigation team, another team of investigators should be selected for its objectivity, integrity, and skill to handle the case, and the team should answer only to the agency head or designee for the progress and findings of the case and determination of filing charges. Having investigators from the supervisory ranks would be desirable to avoid conflicts of interest, as would having investigators from a chain of command outside that of the accused employee if the accused is a supervisor or manager.*

Findings: SPD is in compliance with this guideline. As discussed above, all criminal investigations are handled by the Major Crimes Bureau, whose investigators have experience and training in handling criminal investigations. Although the Major Crimes Bureau is staffed mostly by detectives, supervisors are also involved in the criminal process.

3.4 Cases Internal Affairs should investigate

COPS Guideline: *Internal Affairs should conduct all serious administrative investigations, including but not limited to officer-involved shootings, in-custody deaths, alleged constitutional violations, allegations of racial profiling or discriminatory policing or racial prejudice, dishonesty, drug use, sexual misconduct, cases handled for other jurisdictions, interagency cases, and cases referred directly by the agency head*

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or command staff. Internal Affairs should also conduct all administrative investigations of allegations of misconduct that are likely to result in litigation against the agency or its members. Unless there is a specialized unit to handle internal complaints by employees of discrimination, sexual harassment, and other unlawful employment practices, Internal Affairs should conduct such investigations.

Internal Affairs should investigate all allegations of misconduct of command-level personnel with the exceptions of allegations against the agency head or in any instance where there is an apparent conflict of interest. A complaint against the agency head should be investigated by expert investigators outside the agency acquired by and operating under the auspices of the authority responsible for appointing the agency head.

Findings: SPD is in compliance with this guideline. As described above, the Commissioner makes the decision to classify cases as either a Special Order (SO) or Preliminary Investigation of Employee (PIE), and determines how the cases will be handled. In general, more serious allegations of misconduct are classified as SOs, and are investigated by the IIU.

PERF'S review found that SPD does not currently have policy in place to address apparent conflicts of interest, such as if the Commissioner or IIU lieutenant were the subject of a complaint. In the event that a complaint is made against the agency head or there is an apparent conflict of interest, SPD has relationships with other police agencies in the region who could assist in conducting an internal affairs investigation. However, this is not currently documented in policy, and agreements with other agencies are not formalized.

- **Recommendation:** SPD should establish formal agreements or memoranda of understanding (MOUs) with an outside agency (possibly the Massachusetts State Police) that allow for that agency to conduct an internal affairs investigation if necessary to avoid the appearance of a conflict of interest, for example, if the SPD Commissioner is the subject of a complaint. SPD's Complaint Reception and Investigation policy should also state that if a conflict of interest were to arise, SPD would request this outside jurisdiction to conduct the investigation.
- **Recommendation:** In a situation where the IIU lieutenant or an IIU investigator is the subject of a complaint, the Commissioner should appoint another commander within the department to oversee the internal affairs investigation, to ensure that there is no conflict of interest.

3.5 Cases Internal affairs should relegate

COPS Guideline: *Investigations of less-serious allegations of misconduct by the rank and file should be conducted by investigators where the agency believes the investigations can be properly done.*

Complaints alleging simple discourtesy or rudeness, without any suggestion of discrimination against a particular person or group, could be investigated at the unit level. Similarly, complaints by the public regarding traffic citations and traffic enforcement could be investigated at the unit level...

Internal Affairs should monitor field investigations for quality and due diligence, and take appropriate action if either is lacking. Internal Affairs should be empowered to remand investigations to the field for further work until Internal Affairs has determined that the investigative quality meets its standards.

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Findings: As described above, less serious allegations of misconduct are typically classified as PIEs and investigated by the accused officer's chain of command. This practice is generally consistent with COPS guidelines.

However, there appears to be little understanding by supervisors about how to handle a PIE investigation, as there is no standard protocol or consistent training for investigating these complaints. PERF heard anecdotally that some command staff members, upon receiving a PIE for the first time, did not even know what it was. PERF also observed that some members of the agency, including command staff, may have certain memos and informal guides to investigations that may be out of date. Finally, based on interviews with agency personnel, there appears to be little consensus as to how the police commissioner makes the decision to categorize complaints as PIEs versus SOs.

- **Recommendation:** SPD should develop clear procedures for the investigation of PIEs and should provide training to all officers at the sergeant level and above who will handle these investigations. These procedures should also be documented in policy.
- **Recommendation:** Although not all complaints are formally investigated by the IIU, the IIU Lieutenant should be aware of, and provide some oversight for, any citizen or internal complaint handled by SPD. Even the relatively minor investigations that are designated as PIEs should be reviewed and tracked by the IIU lieutenant to ensure they are being properly handled. Upon reviewing the investigative file, the IIU lieutenant can refer cases back to the field for follow-up if additional investigation is needed. This requirement should also be documented in policy.
- **Recommendation:** SPD should develop clear criteria for procedures delineating which misconduct will be designated as following the investigative path for PIEs, to be investigated by the command chain, and which misconduct will be designated as following the path for SOs, to be investigated by the IIU. General guidance on the criteria should be outlined in policy.

3.6 Recommendations for time limits

COPS Guideline: *Completion of Internal Affairs investigations should occur as rapidly as is reasonably necessary to fulfill the investigative mission. In all instances, however, an internal investigation should be completed within a reasonable time before any applicable statute of limitations or other bar to officer discipline has run out. It is preferable to conclude investigations within 180 days.*

Findings: SPD has certain time limits associated with internal affairs investigations based on its negotiated union contracts. For an investigation involving a supervisor, investigators have 90 days from the time of the event to conduct the investigation and notify the accused officer. For investigations involving patrol officers, investigators have 90 days from the time the supervisor becomes aware of the conduct to complete the investigation and notify the accused officer. There is then an additional 60-day time limit from the time of the notification until a hearing is held, although this can be waived by the officer. For example, if a criminal investigation is ongoing, investigators will often ask the officer to waive the time limit for the administrative investigation until the criminal investigation is complete. Based on interviews with SPD personnel, PERF did not identify any issues surrounding these time

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restrictions. Efficiency is important in these investigations, as “the longer eventual administrative discipline, retraining, or corrective action is postponed, the less effective and meaningful it will be.”¹⁷

3.7 The use of administrative leave

COPS Guideline: *During the pendency of an internal investigation, an agency may place involved officers on administrative leave or reassignment should they be determined to pose a risk to themselves, the agency, or the community; should their presence become disruptive to the successful completion of the investigation; or if the agency determines that termination is likely.*

There often are legal restrictions on whether an agency can suspend with or without pay, reassign, remove peace officer’s powers, or take other actions to prevent a peace officer under investigation from becoming a threat or liability during an investigation. While taking such actions may well be within the agency’s management rights, no decision should be executed without reasonable justification. This standard helps protect the agency not only from legal attack, but forces the agency to avoid knee-jerk reactions to embarrassing or politically frightening events. It also helps avoid conflicts with labor unions.

Findings: SPD is in compliance with this guideline. The Commissioner is responsible for making the decision to place an officer on administrative leave or reassignment, pending the outcome of any administrative or criminal investigation. SPD personnel advised PERF that these decisions are made on a case-by-case basis. Factors including the nature of the complaint and potential risk to the public, agency or officer are examined by the Police Commissioner when making this decision.

3.8 Electronic recordings of interviews

COPS Guideline: *Electronic recording of the live, word-for-word statements of all interviewees, including accused employees, is the best way to avoid interpretive errors in recounting statements. Except in covert operations, all recordings should be done with the full knowledge of everyone involved, with a lead-in statement by the primary investigator announcing the date, time, and location of the interview as well as the names and titles of everyone present...*

Whether an agency transcribes, summarizes, or paraphrases witness statements, electronic recordings are the best means of testing the accuracy of written accounts of interviews. As a form of quality and integrity control, audits comparing electronic recordings with written statements should be at least done randomly. Where variances are found, the cause should be determined and quickly cured...

Absent exigent circumstances, as restricted by law or contract, agencies should give employees a reasonable amount of advance warning before an administrative interview in order for such employees to secure union or legal representation should they want it. Unless provided by law, an employee is not automatically entitled to any specific information or evidence prior to an interview or interrogation, though an agency may choose to make some information available to an employee and his or her representative prior to an interview or during an interview on a case-by-case basis.

¹⁷ “Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice.” DOJ Office of Community Oriented Policing Services. <http://ric-zai-inc.com/Publications/cops-p164-pub.pdf>. Page 24.

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Questions asked during the interview should be open-ended and nonleading. Those conducting interviews should take care not to formulate instantaneous credibility assessments that might bias the investigation. Investigators should receive ongoing training in interviewing and factfinding techniques. Investigators should thoroughly cover in each officer interview what information concerning the incident the officer discussed or received from other officers or outside sources.

Findings: SPD does not currently use any type of audio or electronic recording for its interviews. Currently, the IIU interviews the officer facing the allegation, and then the officer is asked to write a departmental report describing the details of the incident. IIU investigators take notes during the interview, which are memorialized in the IIU report. However, the departmental report written by the accused officer serves as the officer's formal statement. If the officer's report conflicts with the information in the interview, IIU investigators make a note of the inconsistencies and re-interview the officer.

The process by which accused officers are notified of an investigation is somewhat unclear, based on PERF's interviews of SPD personnel. It appears that the accused officer is notified once the investigation is essentially complete except for the officer interview. Investigators apparently approach the accused officer in person without any advance notice. They provide the officer with a copy of the complaint of the misconduct and interview the officer at that time. PERF heard that this method of timing and approach is perceived as unfair by others in the department.

- **Recommendation:** SPD should audio-record all administrative interviews of accused officers and witness officers. This way, if the complaint moves to a formal hearing, the agency can transcribe the interview, so the officer's testimony will be available in written form. Investigators should also audio-record interviews of other witnesses if practicable. If interviews are recorded and transcribed, there will be no need for the accused officer to write a departmental report, as the interview notes and transcript can serve as the officer's statement.
 - **Note:** In discussions with SPD regarding this recommendation, staff members expressed a potential concern about whether audio-recording during the interview process would be impacted by Massachusetts' two-party consent laws. However, if SPD policy states that administrative interviews are to be audio-recorded, any refusal by an officer to conduct the interview would be a violation of departmental policy, given that officers are compelled to provide a statement during an administrative investigation. SPD should inform officers that they will be required to participate in an audio-recorded interview, and that they could face additional administrative charges if they refuse to participate. The Massachusetts State Police currently audio-records internal affairs interviews, and SPD can consider contacting Massachusetts State Police Internal Affairs for additional insight on audio-recording interviews.
- **Recommendation:** After reviewing the case and conducting enough of the investigation to interview the accused officer, IIU investigators should send a letter to the accused officer notifying the officer of the allegations. The letter should set a time and place for the interview, advise the officer about who they may have present with them for the interview, inform the officer that the interview will be audio-recorded, and outline any other applicable protocols.

3.9 Standards of investigative report quality

COPS Guideline: *The documentation of investigations must be thorough, complete, and as comprehensive as reasonably necessary. Using standardized forms or formats helps in quality control, evaluating comprehensiveness and sufficiency of content, consistency, and in recordkeeping.*

...Each investigative report should contain a detailed, comprehensive summary. Although the summary should be impartial, it should also identify inconsistencies between statements and inconsistencies between statements and physical evidence.

Findings: Based on PERF's observations, the reports generated by SPD's IIU investigators appear to be in compliance with the COPS guideline on report quality. For example, COPS guidelines state that reports should be logically organized, utilize clear language, and avoid personal opinions. Several IIU reports reviewed by PERF generally demonstrated these qualities.¹⁸

SPD's IIU uses a standardized format to document SO investigations. However, SPD personnel indicated that PIE investigative files may not consistently follow the same format. The SPD currently relies on the investigative officer's supervisor (e.g., the captain in the accused officers command chain for PIE investigations) to ensure quality control. However, these PIE reports are not reviewed by the IIU lieutenant.

- **Recommendation:** All investigative reports, including those for investigations conducted in the field as PIEs, should be reviewed by the IIU lieutenant to ensure consistency and thoroughness.
- **Recommendation:** The IIU should develop a checklist outlining the components of a high-quality internal affairs report. The checklist should be utilized by sergeants or other supervisors who are conducting PIE investigations in the field to ensure there is a consistent understanding of the necessary steps in an investigation, and how to properly document them.

3.10 The use of a chronology

COPS Guideline: *Internal Affairs should track and maintain a chronological log of all internal investigations. A log of the investigation serves to preserve and maintain a history of the investigation and a means to keep track of the various parts of the investigation.*

Findings: SPD is in compliance with this guideline. The IIU maintains a log of internal affairs investigations in a chronological order, which is currently documented in a Microsoft Access database. Adopting new internal affairs case management software, as recommended above, will also assist SPD in maintaining a chronological log of all internal affairs investigations.

3.11 Agencies should consider using Compliance Audits

COPS Guideline: *A Compliance Audit is a live test to determine whether policies are being followed. ...Compliance Audits can help an agency detect misconduct before the misconduct is complained of by the public. Compliance Audits can also help pinpoint weaknesses in systems, policies, or personnel before*

¹⁸ Although not part of the scope of work, PERF's project team did review several completed IIU investigative files to understand format and process methods.

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anyone is ever accused of misconduct...The use of Compliance Audits lets the public know that the agency takes its integrity seriously.

Findings: SPD does not currently conduct compliance audits of its complaint system. Compliance audits help to ensure that policies and procedures are being properly followed, and can help to identify potential areas for improvement.

- **Recommendation:** As discussed in section 1.8, SPD could consider establishing a staff inspections unit that would be responsible for handling these audits. This would be an additional area where staff inspections could engage in proactive efforts to ensure that agency policies are being followed. **See the "Other Findings and Recommendations" section on 71-72 for additional information on establishing a staff inspections unit.**

3.12 Response to, and review of, lethal-force investigations

COPS Guideline: *All officer-involved shootings targeting or striking a human being, all in-custody deaths, and all serious uses of force as defined by the agency should generate an immediate response to the scene and an investigation conducted by Internal Affairs, or a team of investigators with special training in the investigation of officer-involved uses of deadly force, regardless of whether a complaint will be filed.*

An administrative review, independent of any complaint, of a shooting, in-custody death, or serious use of force should consider the strategic, tactical, policy, training, and risk management implications of any such incident, including whether changes to policy, procedures, equipment, or training might mitigate the effects or reduce the number of similar incidents in the future.

Findings: SPD is in compliance with this guideline. The agency responds to the scene of any critical incident and initiates an investigation by the appropriate unit. Any officer involved shooting or in-custody death is investigated by both the IIU and the Major Crimes Bureau. The IIU identifies any tactical issues in its report, and it is the responsibility of the officer's command chain to acknowledge and address these issues. While SPD is following good practices with regard to providing immediate investigative review of critical incidents, SPD does not currently utilize a review board to critically analyze use-of-force incidents.

- **Recommendation:** PERF recommends conducting a formal review of all officer-involved shootings, in-custody deaths, hospitalizations of prisoners, and serious use-of-force incidents (electronic control weapon, baton, OC spray), by establishing a performance review board. The formal review of these incidents, conducted as a matter of course, will provide valuable opportunities to identify lessons for training, gaps in tactics, any need for additional equipment to be provided to officers, or any need for changes in policy. SPD is planning to implement a body-worn camera program in the near future, and incidents captured on video can be especially useful for identifying ways to improve officers' tactics and tools while providing accountability.
- **Recommendation:** The review board, consisting at a minimum of a captain designated by the Commissioner, a lieutenant, a sergeant, a union representative, and an individual from SPD's training division, should convene quarterly to review each serious use-of-force incident. The board should review any use of force that resulted in a death or injury or involved the use of a

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lethal or less-lethal tool. The review board should ensure that tactics, equipment, and policy are reviewed, and areas of concern are addressed. In addition, in the event that the review board disagrees with the conclusion of the original use of force investigation, it should raise the issue with the commissioner to determine whether the conclusion should be re-evaluated.

- **Recommendation:** The review board should meet within 24 to 48 hours following an officer-involved shooting or in-custody death. The review board should be briefed by investigators regarding the facts of the case known at that time to ensure that no immediate changes to policy, training, or equipment are necessary. The review board should present all findings and recommendations to the Commissioner.

3.13 Lethal-force investigations: interviews and evidence

COPS Guideline: *...Unless otherwise required by law and without regard to whether the investigation is conducted by Internal Affairs or another specialized unit involved, witness officers should be physically separated as soon as possible to avoid even the appearance of collusion. Likewise, members of the agency either involved in or witnessing the critical incident should be ordered not to discuss the incident among themselves until after interviews of all involved agency members have been concluded and the employees have been explicitly authorized to discuss the matter. Where law permits, the officers should be compelled to submit to a comprehensive, electronically audio-recorded interview by agency investigators as soon as is practical and reasonable.*

Findings: SPD personnel advised PERF that it is current SPD practice to separate witness officers after a lethal-force incident and to prevent them from discussing the incident until conclusion of the investigation. However, PERF observed that this practice is not formalized in policy.

- **Recommendation:** After a lethal-force incident, investigators must ensure that witness officers are separated as soon as possible, and members of SPD should be ordered not to discuss the incident until after all interviews have been concluded. This requirement should be formalized in SPD policy.

3.14 Investigations during lawsuits

COPS Guideline: *Each agency should decide as soon as practicable in each case whether the complaint investigation will be completed before or after a lawsuit on the same set of facts is concluded. Because the possible financial, legal, or political consequences of the decision could be extraordinary, the decision should be made by the agency head or designee.*

Findings: SPD is in compliance with this guideline. The decision to complete an administrative investigation before or after the civil investigation is made by the Police Commissioner. Typically at SPD, these investigations are done concurrently, as the 90-day time limit for the administrative investigation still stands unless it is waived by the accused officer.

3.15 Post-resignation investigations

COPS Guideline: *Even if an employee resigns, consideration should be given to investigating the complaint as if the employee were still employed.*

Findings: SPD is in compliance with this guideline. SPD conducts an internal investigation of a complaint even if the employee resigns.

4.0 Mediation, Adjudication, and Disposition

4.1 The four basic resolution categories

COPS Guideline: *The findings in completed investigations should result in one of four resolutions: 1. sustained or founded; 2. not sustained or not resolved or unresolved; 3. exonerated; or 4. unfounded. Some unique state or local laws may require the addition of further categorical distinctions for some limited special circumstances.*

In general terms, a "founded" or "sustained" adjudication means that the allegations are true by a preponderance of the evidence and that the conduct at issue is a violation of agency rules. An "unfounded" adjudication means that the allegations are not true. A "not resolved" or "unresolved" or "not sustained" adjudication means that the allegations cannot be proven true or untrue by a preponderance of the evidence. "Exonerated" means that the conduct at issue occurred but is not a violation of agency rules.

Findings: SPD utilizes the four resolution categories outlined in the COPS guidelines, and IIU investigators have a good understanding of the various dispositions. However, it appears that SPD's Community Police Hearing Board (CPHB) does not have the same understanding, or has not historically used the same terms and resolution categories. Due to a lack of familiarity with these terms, there may also be confusion in areas of the agency other than the IIU about the consistent use of these resolution categories.

- **Recommendation:** These four dispositions and their proper usage should be clearly defined in policy to ensure that everyone in the department, as well as the CPHB, thoroughly understands them. SPD should institute training for all supervisors to ensure there is consistency with regard to how to close a case and how to determine findings based on these four categories. The CPHB should also receive training on these terms and their appropriate usage.

4.2 The value of considering commanding officers' options

COPS Guideline: *The recommendations of commanding officers and their chain-of-command superiors regarding the adjudications of cases and the actions taken regarding the accused employees should be considered by the final deciding authority.*

Findings: SPD is in compliance with this guideline. Following an investigation and hearing, the captain and deputy chief in the accused officer's chain of command review the investigative file and make

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recommendations with regard to the findings. These recommendations are then considered by the Commissioner when making a final determination regarding case disposition and discipline.

4.3 Proposed reporting relationship of the head of Internal Affairs

COPS Guideline: *The head of Internal Affairs should preferably report directly to the agency head. If a direct reporting relationship is not feasible, the Internal Affairs commanding officer should nonetheless have prompt, unrestricted, and confidential access to all agency executives, including the agency head.*

Findings: SPD's IIU is currently comprised of three sergeants and one lieutenant. The lieutenant reports to a captain who in turn reports directly to the Commissioner. There is no deputy chief in the command chain, and no one in IIU has a direct line of access to the Commissioner.

- **Recommendation:** SPD should establish a direct line of communication from the IIU Lieutenant to the Commissioner, and communication should occur on a regular basis. The captain currently provides a number of administrative support functions to the Commissioner, and it is not an efficient use of his time to have to review internal affairs cases in addition to his other workloads. Having the IIU Lieutenant report directly to the Commissioner for all complaint investigation matters would ensure that there is consistency in how these cases are handled, without the need to introduce an additional level of review.

4.4 Standards for adjudication

COPS Guideline: *Adjudicators within the agency should use neutral and objective criteria, weigh evidence appropriately to distinguish strong evidence from questionable or less material evidence, and not indulge in presumptions that bias the findings of fact. The rationale for each adjudication should be in writing, and clearly related to the conduct, the employee, and the agency's rules.*

Minimum standards for adjudication of disciplinary cases include the following:

- 1. The burden of proof is on the agency.*
- 2. The standard of proof is a preponderance of the evidence.*
- 3. The standards of evidence are those of administrative law, not criminal law.*
- 4. No presumptions of truth are made regarding facts in dispute.*
- 5. No presumptions are made regarding witness credibility: all persons are equally credible unless an objective, fact-based evaluation of the witness's capacities, testimonial coherence, and other relevant and demonstrable factors justify otherwise.*
- 6. Conclusions are logically deduced from the evidence.*

Findings: PERF's interviews of personnel indicated that due to a lack of consistent and clear agency policy, adjudication decisions can sometimes be a challenge at SPD. The agency currently has various policies and memos that set forth administrative rules, but officers have no clear rules governing their conduct. This issue is particularly a problem for lesser conduct that might be less obviously considered to be a violation of agency expectations. The fact that some agency policies are outdated or conflict with one another can also create confusion when adjudicating cases.

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In addition, PERF learned that when an accused officer’s chain of command receives the investigative file to make a preliminary finding, there are currently no specific charges or policy violations listed, making it difficult to make decisions regarding adjudication.

- **Recommendation:** SPD should review and develop a revised set of policies and procedures for officer conduct and establish a dedicated in-service training program to explain those policies and procedures. The agency should specifically train all personnel in the captain rank and above who are responsible for recommending adjudication of these cases, to ensure there is a clear and consistent understanding of how to make these decisions.
- **Recommendation:** SPD should revamp its process so that when the investigative file is sent to the accused officer’s command chain for review, the file describes the potential departmental violations and provides clear definitions of the various disposition categories (sustained, not sustained, unfounded, and exonerated). In the case of a Special Order investigation (SO), the IIU lieutenant should consult with an attorney from Labor Relations to determine the applicable charges and policy violations. In the case of a Preliminary Investigation of Employee (PIE), the supervisor conducting the investigation should consult with the IIU lieutenant to determine the applicable charges and violations. The alleged charges and violations should be included in a cover memo with the investigative file to assist reviewers with determining the disposition.
 - **SPD Action Taken:** SPD is already in the process of updating this cover memo to ensure it contains applicable charges and policy violations. This will allow each reviewer (captain, deputy chief, and hearing board) to document their preliminary finding so that the Police Commissioner can review their input on each charge when making a determination regarding case disposition.
- **Recommendation:** The IIU Lieutenant should provide commanding officers with training on what departmental charges would apply in various situations, and an understanding of the potential findings of an investigation.

4.5 Penalty assessment and the use of a penalty matrix

COPS Guideline: *Agencies should have some system or mechanism to ensure that discipline is fair and consistent. A penalty matrix or similar schedule has proven helpful to some agencies whose disciplinary systems are based on a “progressive discipline” theory or collective bargaining agreement. In such systems a matrix can help ensure consistency, objectivity, and predictable penalties for misconduct. A matrix best involves recommended ranges of discipline, allowing for the decision-maker to consider the totality of the circumstances, including aggravating and mitigating factors, in determining appropriate discipline.*

A matrix specifies the nature of offenses or policy violations and associates them with specific penalty options or ranges of discipline. Within such a system, a policy violation falls within a certain class or category of violation that, in turn, corresponds to a particular range or set of discipline options that a decision-maker can consider according to the totality of the circumstances present in a given case.

Findings: Currently the IIU provides historical information to the Commissioner regarding prior penalties for specific types of offenses in a given case, and these are considered when determining discipline. However, the IIU does not make recommendations with regard to discipline – only the Police

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Commissioner makes these decisions. SPD is currently examining the use of a matrix system to ensure that disciplinary action is consistent with prior practices.

- **Recommendation:** SPD should develop a matrix system to ensure disciplinary action is fair and consistent.
- **Recommendation:** After the commissioner has determined the final disposition of an investigation, the Community Police Hearing Board (in the case of a citizen complaint) or the accused officer’s command chain (in the case of an internal complaint) should use the discipline matrix to make a recommendation regarding discipline. The Commissioner should review these recommendations to make a final determination regarding discipline.

This recommendation is a progressive police practice as identified in the Madison, WI, Police Department (MPD) and the Austin, TX Police Department (APD). According to MPD policy, “a police discipline matrix aims to achieve consistency in discipline and to eliminate the appearance of disparity. This matrix does not remove discretion; it provides a range of possible sanctions, thus providing clarity”. Discipline Matrices used in MPD and APD can be found in Appendices A (p. 76) and B (p. 84).

4.6 The advantages of mediation and the conditions of its use

COPS Guideline: *Voluntary mediation conducted by a neutral facilitator, in lieu of investigation and adjudication, permits resolution of minor complaints that are usually not easily resolved through investigation. Mediation should be encouraged except where an officer has a pattern of similar misconduct or where a broader review of the employee’s performance suggests a need to analyze the results of the investigation in the current case. Agencies should consider enacting policies to codify all aspects of their mediation procedures.*

Mediation engages the community by giving individual members of the public who make a complaint the opportunity to have their concerns heard and considered in a way that might not otherwise occur if the complaint was investigated and adjudicated through the formal Internal Affairs process. Mediation is best used as a means of allowing an officer and a citizen to better understand each other’s perspectives. Mediation should not take place unless the complainant and the subject officer each voluntarily agreed to mediate.

Complaints best resolved through mediation are complaints of officer discourtesy or rudeness and others that involve minor “one-on-one” interactions between officers and members of the community. The types of complaints that can be mediated should be described in a clear written policy. The determination whether a given complaint is eligible for mediation should be made according to guidelines established by the agency, including the rank or positions authorized to permit mediation.

Findings: SPD does not currently have a mediation program in place.

- **Recommendation:** SPD should consider adopting a mediation process to resolve minor complaints and strengthen police-community relations. To be effective, mediation should only be an alternative for less serious complaints, and officers should be limited in the number of complaints eligible for mediation over a specific period. Mediation sessions must be led by a

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formally trained mediator.¹⁹ The sidebar below discusses a complaint mediation program that has been successful in Baltimore, MD. A sample policy/procedure for the mediation program can also be found in Appendix C.

- **Recommendation:** SPD should ask the accused officer to waive the 90-day rule for internal affairs investigations in cases where both sides agree to mediation.

Baltimore City’s Complaint Mediation Program

Baltimore has a police complaint mediation program that has been effective in resolving certain types of lower-level citizen complaints against Baltimore police officers. The program is run by the city’s Civilian Review Board and is designed to help resolve conflict and build a better understanding and relationship between officers and residents of Baltimore. Certain complaints of abusive language, false arrest, false imprisonment, and harassment filed with the Civilian Review Board may be eligible for mediation. The process is voluntary and confidential for both parties. The steps of the complaint mediation process in Baltimore are as follows:

- If a complaint is suitable for mediation, the Civilian Review Board calls the officer and the resident to see if they are interested in proceeding with the mediation process.
- If the officer and the community member agree to mediation, the review board schedules a time that works for both participants, and the session takes place at a location in the resident’s neighborhood.
- Two trained mediators from a community mediation center mediate the session. This includes asking each participant to address the conflict, explain the complaint, and discuss how it affected them.
- Mediation can end in an agreement, but this is not required.

The mediation session does not last for more than two hours. A session can take less than two hours, or additional sessions may be scheduled. Upon completion of the mediation, complaints are closed or unsustainable. The mediated complaint is entered into BPD’s internal affairs software system for tracking purposes, and the case is eligible for expungement.²⁰

Baltimore City’s mediation program is based on the Maryland Police Training and Standards Commission (PTSC) Community Member-Police Complaint Mediation Program Model. PTSC provides a sample policy/procedure that SPD can consider. The sample policy can be found in Appendix C.

4.7 Settlement agreements and their value

COPS Guideline: *Well-reasoned and fully justified settlement agreements, conditional suspensions of discipline, “last-chance” agreements, and legitimate dropping of charges or mitigation of penalties should be available when to do so will not undermine the values of fairness, consistency, predictability, and integrity. Decisions to modify discipline should be justified in writing.*

¹⁹ Jack McDevitt and Amy Farrell (2007), *Enhancing Community Review of the Springfield Police Department*

²⁰ “Police Complaint Mediation Program.” Baltimore City Office of Civil Rights.

<https://civilrights.baltimorecity.gov/police-complaint-mediation-program>

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Findings: SPD is in compliance with this guideline. SPD occasionally uses settlement agreements in the penalty phase of an investigation. In these cases, the Police Commissioner works with the officer’s union representative to come to an agreement regarding discipline, and these decisions are documented in writing.

4.8 Exploring alternatives to traditional discipline

COPS Guideline: *Creative alternatives to traditional punitive discipline may be useful in improving the performance of wayward employees in ways traditional punitive discipline is not.*

Findings: SPD currently uses alternative methods in addition to traditional discipline. For example, in some cases SPD retrains an officer rather than using punitive measures. SPD also sometimes allows officers to surrender annual leave time as a form of alternative discipline.

- **Recommendation:** SPD could consider exploring additional opportunities for alternative discipline discussed in the COPS guidelines, such as a model being developed by the Houston Police Department. This system involves identifying nonpunitive means to train, remediate, or otherwise involve officers in constructive activities to reorient their conduct, such as “offering an officer the opportunity to participate in community projects, like doing free home repairs for persons who could not otherwise afford the labor costs.” SPD could also consider incorporating alternative forms of discipline with the adoption of an Early Intervention System (EIS), discussed in detail in Section III.

The Los Angeles County Sheriff’s Office has instituted “Education-Based Discipline” (EBD), which is designed to focus on behavioral change through education rather than punishment. The process gives the officer the option of voluntarily participating in an individualized remedial plan that can include education, training, or other creative interventions to address the misconduct issue. For more information on EBD, see <http://lasd.org/pdfjs/web/GuidelinesForDiscipline.pdf>, p. 10.

4.9 Keeping investigations confidential

COPS Guideline: *Internal affairs investigations should be closed to the officer and the public during their pendency. Nonetheless, the agency head should be fully informed of the progress of internal investigations and should regularly communicate the status of an investigation to the press and general public to the full extent permitted by law.*

Findings: SPD personnel advised PERF that there is currently no confidentiality requirement for internal affairs investigations. PERF learned that witness officers are not required to sign a confidentiality statement stating that they will not discuss the interview or the case during the active investigation. It is important that investigations be kept confidential in order to preserve the rights of the accused officer during the course of an internal affairs investigation.

- **Recommendation:** Witnesses and witness officers interviewed in an internal affairs investigation should be informed that the investigation is confidential in nature, and that they must not discuss the content of the investigation or interview with others.

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- **Recommendation:** SPD should institute clear policy and protocols governing confidentiality of internal affairs investigations. The agency should cite this policy during interviews and inform officers that if they do not maintain confidentiality, they may be charged with a departmental violation.
- **Recommendation:** Although specific details of an investigation should be kept confidential, SPD should communicate the status of the investigation to the media and general public when asked, and should be transparent about the progress of the investigation.

4.10 Guidelines for selecting and retaining Internal Affairs investigators

COPS Guideline: *To make certain that Internal Affairs units benefit from high-quality and experienced employees, agencies should consider utilizing promotional policies that recognize service in Internal Affairs as productive and useful for advancing an officer's career, and they should make such policies explicit and well-publicized. Tours in Internal Affairs should be limited to fixed terms.*

Agencies should consider providing officers with incentives to work in Internal Affairs, such as an explicit policy that places service in that unit as highly advantageous for promotional or assignment purposes. Specific requirements should be established for the selection of individuals to work in Internal Affairs. Prior investigative experience or a strong investigative background should either serve as a requirement or a significant qualification for Internal Affairs service. Consideration should also be given to using supervisors instead of nonsupervisors because supervisors typically have agency-wide interests and accountability, and are likely to consider broader organizational questions beyond just the question of guilt or innocence in the instant case.

...After being selected, the agency should provide as much ongoing training or professional development in investigation and Internal Affairs investigation as possible, including training in effective interview techniques, development of case strategy, laws that apply to Internal Affairs investigations, and other subjects relevant to fulfilling the investigative mission.

Findings: The individuals in SPD's IIU are handpicked by their commanding officers and approved by the Police Commissioner. Criteria considered in the selection process includes experience, professionalism, and a record free of complaints. In accordance with COPS guidelines, SPD generally selects officers with prior investigative experience, and all of the investigators in the IIU are sergeants. However, SPD does not have any fixed term for how long officers are assigned to the IIU. PERF also learned that there may be misperceptions within SPD about how IIU investigators are selected.

- **Recommendation:** SPD should consider imposing a set term that an officer may serve in the IIU. For example, 3 to 5 years could be a general guideline. Implementing such a guideline would ensure that investigators do not develop biases or become emotionally drained after extended assignments. Importantly, assignments to the unit should be staggered to ensure that the unit has experienced investigators at all times.
- **Recommendation:** PERF does not suggest a mandatory rotation through IIU for all supervisors, because the quality of the unit benefits from having employees who want to be there. But a rotation through IIU by employees who are candidates for advancement in the department should be strongly encouraged. Individuals who show leadership potential at the rank of

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sergeant should be considered for assignment to the IIU, so that they may gain experience with internal affairs investigations.

- **Recommendation:** SPD should develop a policy and procedures that set forth clearly delineated criteria for qualifying for the IIU and the selection process. This will ensure that the selection process is transparent and avoid any possible misperceptions about IIU personnel.

Section II. Review of the Community Police Hearing Board

In 2004, the Springfield Police Department was involved in an allegation of excessive use of force alleging that the agency had “engaged in a continuous pattern and practice of racially discriminatory conduct towards members of Minority groups in the City.”²¹ As part of a process for resolving that complaint, Professor Jack McDevitt of Northeastern University and his associate, Dr. Amy Farrell, conducted a study and recommended that the city of Springfield establish a civilian review process for complaints of misconduct against SPD officers. The Community Complaint Review Board (CCRB) was created to review the Police Department’s investigations of incidents in which an officer’s alleged behavior resulted in a civilian filing a complaint, and instances of police use of force.²²

In February 2010, Mayor Domenic Sarno created a new, stronger Community Police Hearing Board (CPHB) through an Executive Order.²³ The Mayor’s order “expanded the authority of the Board to act as a hearing officer for the Police Commissioner and to make findings [regarding] each complaint and recommendations as to the discipline to be imposed. The Executive Order increased the role of the community in the discipline of police officers charged with misconduct as a result of citizen complaints.”²⁴

The CPHB is comprised of seven members from the community, selected by Mayor Sarno. The members are diverse in race and gender and represent a variety of perspectives and backgrounds, including human resources and union representation, education, security, law enforcement, the clergy, and small business owners. The chairman is an attorney.

The board is subject to open meeting laws, meaning that disciplinary hearings are open or closed at the option of the employee. The board is authorized to subpoena witnesses, administer oaths, hear the testimony of individuals under oath, and require the production of evidence.²⁵ In the following section, we provide a more detailed overview of the role of the CPHB in reviewing and hearing citizen complaints, and offer recommendations for improving CPHB processes.

Overview of CPHB Role

There are two main functions of the CPHB’s role in reviewing citizen complaints.

Step One, Preliminary Review: Following the completion of an investigation by the IIU or accused officer’s chain of command, the CPHB is provided with a complete hard copy of the investigative file,

²¹ Pastors Council of Greater Springfield v. City of Springfield Police Department Complaint #042403343, filed with Massachusetts Commission Against Discrimination, December 15, 2004.

²² Jack McDevitt and Amy Farrell (2007), *Enhancing Community Review of the Springfield Police Department*. https://www.springfield-ma.gov/cos/fileadmin/mayor/cphb/McDevitt_Report.pdf

²³ Mayor Domenic S. Sarno Executive Order: Community Police Hearing Board for Springfield Police Department.” <http://media.masslive.com/breakingnews/other/Executive%20Order.pdf>

²⁴ “Community Police Hearing Board Report for 2017.” May 25, 2018. Page 4. https://www.springfield-ma.gov/cos/fileadmin/law/CPHB/CPHB_Annual_Report_2017.pdf

²⁵ “Community Police Hearing Board, Current Members.” <https://www.springfield-ma.gov/cos/index.php?id=cphb-members>

Section II. Review of the Community Police Hearing Board

including the written report. The disciplinary history of the accused officer is often included with the investigative file. A subset of the CPHB, typically two members, meet in person to review the file. An attorney from the Law Department also participates in this meeting, acting as an advisor to the board. The board members review the investigative file to determine whether the complaint has merit and should proceed to a hearing. At this point, the investigative file contains information on what the citizen complained about and the results of SPD's administrative investigation, but it does not include analysis from the Police Department about which policies the officer may have violated and any applicable charges. The type of misconduct is not specified, as no charge letter has been presented by the IIU at this point in the process.

The CPHB members in this initial review may decide that further investigation is needed and send the case back to IIU for that purpose. Otherwise, the CPHB subset makes a decision as to whether the matter will proceed to a hearing by the full board. All matters involving use of force proceed to a full hearing.

Following this initial review, the CPHB sends the file back to the Police Department, where it is reviewed by the accused officer's command chain. At this point, the command chain makes a preliminary finding of whether the allegation is sustained, not sustained, unfounded, or justified, and provides that finding to the Police Commissioner, along with their analysis. These preliminary findings are not based on specific charges or policy violations, but on whether the complaint appears to have merit. The Commissioner then reviews the file to consider (1) the command chain's findings and analysis and (2) the CPHB recommendation regarding whether the matter should proceed to a full CPHB hearing. Charge letters are drafted at this point in the process. If the board has determined that there will be a hearing on the matter, it is then returned to the board for the hearing to proceed.

Step Two, CPHB Public Hearing: The second step of the CPHB process is the hearing, if applicable. The full board may participate in the hearing, although all board members may not be present for all hearings. The hearing is open to the public, and the board hears the case on the charges set forth in the charge letter. An attorney from the city's Law Department presents the case against the accused officer, and the attorney for the accused officer defends the case. Both sides may present evidence, call witnesses, and take the testimony of any person under oath.

Following the presentation of the case, the board deliberates. The deliberations are not open to the public, but the following individuals are also present for the deliberations: the Law Department attorney representing the board, the accused officer, counsel for the accused officer, the IIU investigator, and the Law Department attorney presenting the case.

At the conclusion of the deliberations, the CPHB reaches a determination as to whether to sustain or not sustain each of the alleged violations of misconduct. The case, and the recommendations by the CPHB, are sent to the Police Commissioner, who makes the final determination as to the charges, as well as discipline.

PERF Findings: It appears that the board could benefit from additional training on how to fairly judge police conduct. There are no formal protocols for the process and proceedings followed by the board, and board members do not receive adequate training on how to execute their role. For example, as

Section II. Review of the Community Police Hearing Board

noted above, when the board reviews an investigation for purposes of determining whether a case will proceed to a public hearing, the board members have not received any information from the Police Department about which policies were allegedly violated, nor have they received any initial assessment by experienced police officials regarding the conduct in question.

PERF developed the following recommendations regarding the CPHB structure, policy and training, complaint investigative procedures, hearing procedures, and community outreach.

CPHB Structure

- **Recommendation:** The CPHB should be comprised of nine or ten members, three of whom should be former law enforcement investigators with relevant police experience. The chair of the board should be a retired judge or respected attorney with trial experience. The board should sit in panels of three designated members to review each case, including the investigative file, applicable charges, and command chain preliminary determination and analysis. Each three-member panel should always include one of the retired law enforcement officers serving on the board. These panels should be rotated to ensure a variety of opinions in this phase of the process.²⁶
- **Recommendation:** As recommended in the 2007 McDevitt and Farrell report, the city of Springfield should appoint a Civilian Oversight Coordinator (COC), who would be responsible for the day-to-day administration of the CPHB, such as scheduling board meetings and following up on board requests. The COC would serve as the liaison between the board and other officials such as the Mayor, the Law Department, or representatives from SPD.²⁷ This individual would also participate in the initial CPHB review, and could take over the role that is currently fulfilled by an attorney from the Law Department. The coordinator would review files in preparation for board meetings and be present at all panel meetings to provide direction and guidance to the board members.
- **Recommendation:** The individual selected as the COC should understand SPD policies and practices, and should have the authority to obtain this information in an efficient manner. The qualifications of the position should include “strong administration and communication skills, experience with neighborhood outreach activities, experience with formal municipal administrative operations and a willingness to participate in community outreach and education activities.”²⁸ The City of Springfield will need to explore the time commitment required for this position to determine whether the position will need to be fulltime. Springfield should first review current civilian staffing and workload in the Mayor’s Office or Law Department to consider whether the COC position could be a part-time assignment until this determination is made.

²⁶ If the board is comprised of nine members, the chair could also serve as a member of one of the three-member panels. If the board is comprised of ten members, the chair would not have to serve on one of the three-member panels.

²⁷ Jack McDevitt and Amy Farrell (2007), *Enhancing Community Review of the Springfield Police Department*. https://www.springfield-ma.gov/cos/fileadmin/mayor/cphb/McDevitt_Report.pdf

²⁸ Ibid.

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- **Recommendation:** A three-member panel of board members, as well as the Civilian Oversight Coordinator, should meet every two weeks to review new cases. As noted above, each of these panels should have at least one member with prior law enforcement experience.
- **Recommendation:** On a yearly basis, all members of the CPHB should meet to review any SPD policies or procedures that may contribute to police misconduct, and to develop recommendations for improvement. The CPHB should be empowered to recommend changes in policy and training to reduce officer misconduct.

Policy and Training

- **Recommendation:** The city of Springfield should develop a mission statement for the CPHB with clear written procedures to follow. These should include protocols delineating: (1) the purpose of each stage of the process; (2) the materials the board should have at each stage; (3) what the board should do at each stage; (4) how the board should conduct its assessment at each stage, including the options for a determination, what each disposition means, and the legal standard to be used in evaluating the evidence to make the determination.
- **Recommendation:** SPD should provide in-depth training for the CPHB on the protocols developed for the mission statement. The training should include modules led by members of IIU and experienced attorneys from the Law Department as well as the officers' union. This training should include specific topics such as use of force, courtesy violations, and other issues that frequently come to the attention of the hearing board. The following training topics were recommended in the 2007 McDevitt and Farrell report:
 - Current procedures for filing and investigating a complaint;
 - Elements of a thorough investigation, including a review of a number of actual case files from closed investigations;
 - SPD policies regarding respectful treatment of civilians;
 - SPD policies regarding appropriate use of force;
 - The role of civilian oversight boards in other jurisdictions; and
 - Legal requirements for protection and confidentiality of certain types of governmental documents.²⁹

CPHB Procedures

- **Recommendation:** **At the completion of the IIU investigation and prior to an initial review by the CPHB, the IIU, in conjunction with attorneys from the Law Department, should issue a cover memo detailing the applicable charges based on the allegations and the investigation.** The applicable charges and the investigative file should then be provided to the command chain in the accused officer's unit for review. The command chain should then make a preliminary determination and provide a written analysis in support of that determination. The investigative file, cover memo, and command chain preliminary determination and analysis would then be provided to CPHB for the initial review.

²⁹ Jack McDevitt and Amy Farrell (2007), *Enhancing Community Review of the Springfield Police Department*

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- **Recommendation:** During this initial review by the CPHB, the disciplinary history of the accused officer should not be included in the investigative file. Each case should stand on its own merits, and the disciplinary history should not taint the perception of the board.
- **Recommendation:** The three-member panel of CPHB members should make a recommendation to the Commissioner regarding a determination for each applicable charge. The CPHB should use the same case dispositions as defined by IIU including sustained, not-sustained, exonerated or unfounded. A formal charge letter should be provided to the accused officer after the Commissioner makes a final determination. If, after the charge letter has been issued to the accused officer, the officer does not dispute the charges, there should be no reason to proceed with the full hearing. If the officer does not dispute the charges, the CPHB should make a recommendation regarding discipline, and then the case should go directly to the Commissioner to make a final decision regarding discipline.

Hearing Procedures

- **Recommendation:** The CPHB should be required to draft a written opinion following the hearing that clearly details its findings of fact and conclusions based on the relevant legal standard.
- **Recommendation:** Hearings should be held at a facility such as City Hall, rather than police department headquarters, to provide a neutral setting for the sessions.

Community Outreach

In addition to hearing cases of officer misconduct, the CPHB has a community outreach role. This serves the dual purpose of educating the community about the review and adjudication of allegations of officer misconduct, and also serving as another vehicle for citizens to bring complaints directly to the CPHB. The Mayor's office and CPHB have indicated that they would like to increase the board's activity on this front. Board members believe that many in the community do not know that the CPHB exists, much less understand what it does.

- **Recommendation:** CPHB should provide information to City Council members on its functions and procedures. The city should create an open channel for communication between the board and City Council members.
- **Recommendation:** CPHB should work closely with the Mayor's Office to devise a more consistent plan for community outreach. The Civilian Oversight Coordinator should assist with these efforts. The Mayor's Office should devote resources to publicizing the board and its function with advertisements, including brochures and billboards.
- **Recommendation:** Currently, information about the CPHB can be found on Springfield's Law Department website. SPD should consider including information on the Police Department website about the CPHB, what it is, and how it operates. There should also be a separate website for the CPHB that is linked from SPD's website. This CPHB website should provide an opportunity for citizens to access and submit the complaint form electronically, to ensure that the form is easily accessible to the public.

Oversight, Accountability, and Citizen Involvement

Section II. Review of the Community Police Hearing Board

In the past, the City of Springfield utilized a Board of Police Commissioners to manage and control the police department. In 2005, a state-run financial control board dissolved the Board of Police Commissioners and created the single position of Police Commissioner. The Police Commissioner is appointed by the mayor and has complete authority over the police department.

PERF is aware that the Springfield City Council has voted to establish a new civilian police commission that would have authority over key issues such as hiring, firing, disciplining officers, and policy development.

Advocates of a civilian board of police commissioners argue that a board would provide a higher level of civilian oversight of the police department in Springfield. However, Springfield's Community Police Hearing Board already has the authority to review citizen complaints, make recommendations, and conduct hearings regarding the complaints.

A number of cities across the nation have Boards of Police Commissioners that provide general oversight of police departments. This can be a worthwhile method of providing civilian input into major decisions about a city's approach to controversial issues, such as the role of the police in immigration enforcement. However, under the legislation approved by the Springfield City Council, the Board of Police Commissioners would have far greater authority to run key aspects of the Police Department on a day-to-day basis, including "the appointment, management, and control of the members and employees of the Police Department," as well as "the regulation, government, and discipline of such members and employees," and all "rules and regulations for the government and discipline of the Police Department."

PERF believes that this system would be impractical to the daily running of the department, particularly considering the fact that police chiefs make important decisions about critical incidents on a daily basis, but the legislation approved in Springfield would require only that the Board of Police Commissioners meet "at least once a month."

PERF believes that the current system with a police commissioner appointed by the mayor is preferable to reinstating a Board of Police Commissioners. Unlike a board of civilian commissioners, a police commissioner is directly responsible for the daily work of the Police Department and can be held accountable for actions taken by the Police Department. A five-member board of civilians could result in *less* accountability, because no one person could be held responsible for police operations.

PERF believes that SPD needs two kinds of oversight – citizens providing input, and an executive who has the responsibility and authority to hold members of the Police Department accountable. Citizen input can be provided through Springfield's existing Community Police Hearing Board. And accountability can be provided by a strong Police Commissioner who retains responsibility for hiring, firing, discipline, and policy and procedures.

- **Recommendation:** The City of Springfield should maintain the management system currently in place in the police department, utilizing a sole police commissioner who has the experience, education, skills, and authority necessary to lead and manage a police agency, with civilian input provided by the Community Police Hearing Board.

Section III. Software Systems to Manage Internal Affairs and Early Intervention System Cases

Early Intervention System (EIS)

Over the past 25 years, the use of Early Intervention Systems (EIS),³⁰ especially for large and medium-size police agencies, has emerged as a widespread practice in police personnel management.³¹ The underlying concept of an EIS is that serious incidents of police officer misconduct often do not erupt unexpectedly. Rather, such significant events are often preceded by a number of minor past incidents or concerning patterns of behavior. An EIS is designed to help agencies detect these potential areas of concern and address them through training, counseling, or other non-punitive measures before more serious misconduct occurs.

This section covers the following issues regarding EIS:

- How an EIS works
- The benefits of EIS and its use by police agencies across the country
- SPD's efforts to develop an EIS
- How to build support for EIS among agency leaders and personnel
- How to design an EIS
- How to implement an EIS.

The Springfield Police Department (SPD) is considering the implementation of an EIS, and this section provides research and recommendations to assist in this process.

How an EIS Works

An EIS generally consists of four components:³²

- **Performance metrics or variables** that are related to incidents and behaviors, and that can be potential indicators of future misconduct or performance problems. Examples include citizen complaints against an officer, uses of force, lawsuits against the officer, the officer's performance evaluations, supervisory actions against the officer, excessive sick leave, etc. Some agencies' EIS systems track as few as a half-dozen indicators, while other agencies may track 20 or more data points.

³⁰ In the early stages of these systems' development, they were commonly referred to as Early Warning Systems (EWS). The use of the word "warning" connoted to many officers a punitive, disciplinary potential to these systems, which was counterproductive if the goal is to prevent problems from occurring. Thus, the word "Intervention" came into use as a replacement. Some entities refer to these as Early Identification and Intervention Systems. This report will use Early Intervention Systems (EIS) as the generic term.

³¹ Samuel Walker (2005). *The New World of Police Accountability*. Thousand Oaks, CA: SAGE Publications, Inc.

³² The John F. Finn Institute for Public Safety, Inc. (2015). *Features of Contemporary Early Intervention Systems: The State of the Art*. IACP 2015 Conference, Chicago, IL. A copy of this report is attached.

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- The **threshold levels for these variables** to identify, or flag, officers with possible performance concerns. When a threshold is met, an alert is “triggered” in the system and the officer’s supervisor is notified. For example, if “complaints against an officer” is a variable included in the EIS, the department must determine how many complaints must be filed within a certain time period for the EIS alert to be triggered.
- **Interventions** that an officer’s supervisor will use to address the performance problems. Interventions are designed to be non-punitive and to help modify the officer’s patterns of behavior, and they may include options such as additional training, counseling, or a change of assignment.
- **Follow-up monitoring** of the officer after the intervention is implemented.

For a more detailed discussion of these components, see the “Designing the EIS” section below.

EIS Benefits and Use

Establishing a well-functioning EIS can yield substantial benefits for SPD, including improved officer performance, stronger police-community relations, a decrease in complaints and civil litigation, and savings in recruitment and training costs due to lower employee turnover. In addition, an EIS can help prevent officer misconduct, which can help build public confidence and trust in the police. A well-designed EIS, integrated into an evolving internal organizational culture of enhanced integrity and accountability, should serve the SPD and the residents of Springfield who rely upon the SPD for vital services.

The use of an EIS is considered a progressive practice in police personnel management.³³ The Commission on Accreditation for Law Enforcement Agencies (CALEA) has made the establishment of such a system a mandatory requirement for accreditation, regardless of the size of the agency.³⁴ Additionally, many police agencies that have entered into consent decrees or memoranda of agreement with the Civil Rights Division of the U.S. Department of Justice (DOJ) have agreed to create an EIS.³⁵

³³ Samuel Walker (2005). *The New World of Police Accountability*. Thousand Oaks, CA: SAGE Publications, Inc. p. 107.

³⁴ In its *Standards for Law Enforcement Agencies (fifth edition, 2009)*, CALEA states: “The agency should not be faced with investigating an employee for a serious case of misconduct only to find there was an escalating pattern of less serious misconduct, which could have been abated through intervention. The failure of the agency to develop a comprehensive Personnel Early Warning System can lead to the erosion of public confidence in the agency’s ability to investigate itself, while putting the public and agency employees in greater risk of danger.” CALEA standards are size-graduated, with four categories of agency, based on the number of sworn personnel. Certain standards are deemed either not applicable or optional for smaller agencies; but establishment of an EIS is one of the requirements applicable to every agency, size notwithstanding.

³⁵ Police Executive Research Forum (2013). *Civil Rights Investigations of Local Police: Lessons Learned*. Washington, DC. Pp. 16-18.

http://www.policeforum.org/assets/docs/Critical_Issues_Series/civil%20rights%20investigations%20of%20local%20police%20-%20lessons%20learned%202013.pdf.

Using Research to Build a More Effective EIS

Early Intervention Systems vary widely from one police agency to the next, depending largely on the number and types of performance metrics that can be included in the system. One agency may have a limited EIS designed to flag potential problems, while another agency may have a broader EIS that is designed to improve officers' performance overall. Many researchers and practitioners are collaborating to study EIS programs and to determine how to maximize their effectiveness.

University of Chicago/Charlotte-Mecklenburg Police Department Study³⁶

The Charlotte-Mecklenburg, NC Police Department (CMPD) recently partnered with the University of Chicago's Center for Data Science and Public Policy (DSaPP) to explore ways to improve the department's EIS. Using existing CMPD internal affairs data, DSaPP used advanced data analytics to identify patterns of officer events and behavior and make *predictions* about which officers would subsequently be involved in an adverse incident (e.g., a sustainable complaint, preventable motor vehicle accident or injury, unjustified use of force, etc.).

The results showed that this approach resulted in predictions that were more accurate than under CMPD's existing EIS, in which the system flags an officer who surpasses one of several incident thresholds (e.g., two motor vehicle accidents in 180 days, three complaints in 180 days, three uses of force in 90 days, etc.). Compared to CMPD's existing system, the DSaPP system flagged 12% more officers who went on to have adverse incidents, while flagging 32% fewer officers who did not have subsequent adverse incidents. More accurate predictions mean that more officers in need can receive the appropriate intervention, such as training and counseling.

The DSaPP system also identified the factors that were most important for predicting an officer's involvement in an adverse incident. **The most predictive factors related to an officer's past behavior, including prior violations of rules of conduct, suspensions, adverse incidents, and sustained complaints.** Factors related to stress and the officer's patrol neighborhood also proved important for predicting involvement in an adverse incident.

John F. Finn Institute, Inc./National Institute of Justice Study³⁷

In another study, the National Institute of Justice (NIJ) provided support to the John F. Finn Institute, Inc.,³⁸ along with his partners from the University of Central Florida, the University of Massachusetts-Lowell, and The Urban Institute, to conduct a comprehensive study of police EIS. The purpose of the

³⁶ Crystal Cody, Estella Patterson, Jennifer Helsby, et al. (2016). *Building Better Early Intervention Systems*. Police Chief Magazine. August. <http://www.policechiefmagazine.org/building-better-early-intervention-systems/>.

³⁷ The John F. Finn Institute for Public Safety, Inc. (2015). *Features of Contemporary Early Intervention Systems: The State of the Art*. IACP 2015 Conference, Chicago, IL. <https://finninstitute.com/early-intervention-systems-the-state-of-the-art/>

³⁸ The John F. Finn Institute is an independent, not-for-profit and non-partisan corporation. The Institute conducts social research on matters of public safety and security – crime, public disorder, and the management of criminal justice agencies and partnerships – in collaboration with municipal, county, state, and federal criminal justice agencies, and for their direct benefit. <http://finninstitute.org/>.

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study, which is called *Early Intervention Systems: The State of the Art*, is to better inform law enforcement practitioners, policy-makers, and researchers about best practices in early intervention.³⁹

The study was conducted in two phases:

- **Phase I – National Survey of Police EIS programs:** A survey of 243 police agencies⁴⁰ of various sizes across the United States with EIS programs was designed to provide data on the structural characteristics of EIS. (Sixty-four percent of the agencies had fewer than 500 sworn officers, 18 percent had 500 to 999 officers, and the remaining 18 percent had 1,000 or more officers.)
- **Phase II – Case Studies of EIS:** This phase will focus on a more comprehensive analysis of the EIS in several police agencies whose systems have varied structural characteristics. At the time of this report, Phase II was still under way.

The survey produced a number of findings regarding how EIS programs are structured in agencies across the United States:

- **Most common metrics:** The five most common behavioral variables measured in an EIS were: citizen complaints against an officer; uses of non-lethal force; internal complaints; vehicle damage/accidents; and being the subject of internal investigations. Of the responding agencies, 54% include all five of these variables. Other common behavioral variables include officer-involved shootings, vehicle pursuits, internal policy violations, and officer-involved firearm discharges.
- **Setting “triggers”:** To determine when an alert will be triggered, most agencies use a formula that looks at the number of incidents that occurred during a specific period of time. For example, the EIS in several agencies flags any officer who is involved in three or more uses of force in a 12-month period. It is uncommon for agencies to consider a time frame longer than 12 months.
- **Second-stage review:** Among the agencies that provide for second-stage review, immediate supervisors are most commonly (in 42% of responding departments) responsible for reviewing officer performance and determining what, if any, kind of intervention is needed. Internal affairs/professional standards units were solely responsible for this second-stage review in 21% of the responding agencies.
- **Interventions:** The interventions offered as part of an EIS were fairly similar across the responding agencies. A large majority (89%) of the agencies provide counseling by one’s immediate supervisor as part of the EIS, which reflects the philosophy that an EIS is not intended to result in discipline so much as to flag officers who exhibit potentially problematic behavior that can be corrected.
- **Post-intervention monitoring:** Approximately two-thirds of all responding agencies provide for post-intervention monitoring. This monitoring is more likely to occur in agencies with fewer sworn

³⁹ The John F. Finn Institute for Public Safety, Inc. (2015). *Features of Contemporary Early Intervention Systems: The State of the Art*. IACP 2015 Conference, Chicago, IL. <https://finninstitute.com/early-intervention-systems-the-state-of-the-art/>

⁴⁰ The sample was selected as follows: In 2014, the researchers administered a survey to the 344 police agencies that participated in the 2007 Law Enforcement Management and Administrative Statistics (LEMAS) survey and reported that they utilized an EIS. Of the 344 agencies who received the survey, 274 (80%) responded, and 243 reported they had an EIS in 2014.

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personnel. There was a wide variation across agencies regarding the duration of the monitoring, with 12 months being the most common.

The findings of this survey, as well as the forthcoming findings from the case studies, can provide guidance for police agencies as they design their own EIS.

EIS at SPD

SPD currently does not have an EIS. However, SPD leaders acknowledge the need for a more comprehensive approach to early intervention. SPD currently does not use a technology-based platform for management of its internal affairs cases. SPD leaders need to consider several factors as they develop and implement a comprehensive EIS, including the software the department will use for management of its internal affairs cases. SPD should continue to research best practices and consult with vendors to learn about different IA software programs.

When developing the EIS, SPD should remember that the EIS should be a non-punitive tool whose purpose is to proactively identify and address potential issues before they become problems. Therefore, EIS should not be part of the department's Internal Affairs function, but should instead be tied to another agency unit. In addition, SPD should determine how to secure support for an EIS from SPD leaders and officers, what types of officer behavior the EIS should measure, and how to effectively implement the system.

The remainder of this section discusses these factors and presents recommendations based on current research and practices in other police agencies.

Building Agency Support for EIS

Research has shown that in order for an EIS to be effective, a police agency's chief executive must demonstrate strong leadership and be fully committed to making the EIS work.⁴¹ This commitment must be made clear to managers, supervisors, and line officers, and it should be fully institutionalized so that the EIS becomes an established presence within the organization. PERF has identified several ways that SPD leaders can demonstrate the department's commitment to establishing an effective EIS.

- ***Build a System of Accountability:*** First, leaders should ensure that the EIS exists within a larger system of accountability mechanisms and officer support services. An EIS is not simply a stand-alone "quick fix" to flag potentially errant officers; rather, an EIS should be one component of a comprehensive, department-wide system to strengthening officer performance and accountability. This system should include leaders who are open to receiving and promptly investigating complaints; a fair, consistent and timely disciplinary process; upgraded and thorough officer training; and strong support services for officers (e.g., a strong Employee

⁴¹Samuel Walker, Stacy Osnick Milligan and Anna Berke (2005). *Supervision and Intervention within Early Intervention Systems: A Guide for Law Enforcement Chief Executives*. Washington, DC: Police Executive Research Forum, and U.S. Department of Justice, Office of Community Oriented Policing Services.

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Assistance Program, officer safety and wellness programs, and a chaplains unit). Without these other elements, an EIS will not function well or live up to its potential.

- ***Provide Adequate Resources:*** Second, agency leaders must commit to providing the staffing and budget resources necessary for the EIS to work properly. For instance, a well-functioning EIS will flag officers for attention, which may result in referrals for employee assistance counseling or personalized remedial training. The agency's EAP and training academy must be suitably staffed and instructed to provide these services. Overall, interventions need to be tailored to meet the wide array of circumstances and needs that individual officers may present.⁴² Additionally, front line supervisors – sergeants – will see increased responsibilities, and they will need preparation to meet these new expectations.
- ***Provide Ongoing Attention:*** Third, the police agency must recognize fully that adoption of an EIS is not a one-time matter. An early, major study of EIS noted: "EW [Early Warning] systems are complex, high-maintenance operations that require considerable, ongoing investment of management attention."⁴³

PERF also has found that in addition to a commitment from top agency leaders, an effective EIS requires support from rank-and-file officers and first-level supervisors. To help secure this support, agency leaders should educate officers and supervisors about the purpose, goals, and uses of an EIS. A core component of a successful EIS is that it must be seen as non-punitive and wholly separate from the disciplinary process. Thus, it must be clear that any EIS alerts are used exclusively for EIS response, and do not serve as a catalyst for Internal Affairs investigations or disciplinary penalties.

Designing the EIS

In designing its EIS, SPD will have a number of key questions to answer, including:

1. What behavioral variables should be included?
2. What number of incidents should "trigger" an alert for each measure?
3. What is each officer's peer group for comparison purposes? (Some EIS programs measure officers' behavior against that of other officers in the same unit or conducting similar activities.)
4. What is the appropriate role of supervisors?
5. What intervention options will be available?
6. How will data be collected and integrated?
7. How can the agency identify EIS "failures of omission"?

Each of these steps is addressed below.

⁴² Samuel Walker, Stacy Osnick Milligan and Anna Berke (2005). *Supervision and Intervention within Early Intervention Systems: A Guide for Law Enforcement Chief Executives*. Washington, DC: Police Executive Research Forum, and U.S. Department of Justice, Office of Community Oriented Policing Services.

⁴³ Samuel Walker, Geoffrey P. Alpert, Dennis J. Kenney (2000). *Final Report: Responding to the Problem Police Officer: A National Study of Early Warning Systems*. Washington, DC: National Institute of Justice.

Step 1: Determining the Behavioral Variables to Include

When developing its EIS, SPD must decide which behavioral variables will be included to “trigger” an alert for an intervention. These variables, which are also sometimes referred to as “indicators,” typically focus on identifying incidents and behaviors that might be suggestive of performance problems, early signs of misconduct, a failure to follow departmental rules, or mental health concerns.⁴⁴

The variables that SPD uses for its EIS might include the following:

- **Core Variables:** Some core measures that are routinely included in an EIS are: use-of-force reports, citizen-initiated complaints, officer-involved shootings, high-risk crime reports, internal investigations, missed scheduled firearms qualifications, overtime usage, work-related injuries, elevated use of time off, pursuits, vehicle collisions, and criminal allegations against an officer.⁴⁵
- **Officer Wellness Variables:** In addition to the core variables, SPD may also wish to include variables in its EIS to identify potential officer wellness concerns, such as substance abuse, depression, post-traumatic stress disorder (PTSD), and other mental health issues. Many of the measures that can signal mental health or substance use issues are already captured in police personnel records (e.g., frequent tardiness; declining productivity and efficiency; short, frequent use of sick leave). SPD leaders should consult with personnel who are knowledgeable about substance abuse and mental health issues (e.g., clinicians, psychologists, EAP staff) when developing these wellness variables.
- **Additional Variables:** Knowledgeable first-level supervisors and managers within the SPD should identify any additional behavioral issues specific to the SPD that warrant inclusion in an EIS. For example, a U.S. Department of Justice review of the Newark (NJ) Police Department concluded that officer theft of arrestees’ property was a serious issue.⁴⁶ Therefore, a settlement agreement between the DOJ and the Newark Police Department specifically mandated that the agency’s EIS include allegations of theft.⁴⁷

The SPD should periodically reexamine the behavioral measures it includes in its EIS and revise as needed.

⁴⁴ The John F. Finn Institute for Public Safety, Inc. (2015). *Features of Contemporary Early Intervention Systems: The State of the Art*. IACP 2015 Conference, Chicago, IL.

⁴⁵ Police Executive Research Forum (2015). *Critical Response Technical Assessment Review: Police Accountability – Findings and National Implications of an Assessment of the San Diego Police Department*. Washington, DC: Office of Community Oriented Policing Services.

<https://www.sandiego.gov/sites/default/files/legacy/police/pdf/perfrpt.pdf>.

⁴⁶ United States Department of Justice Civil Rights Division, and United States Attorney, District of New Jersey, *Investigation of the Newark Police Department*, July 22, 2014.

http://www.justice.gov/crt/about/spl/documents/newark_findings_7-22-14.pdf.

⁴⁷ United States Department of Justice, Civil Rights Division, *City of Newark and United States of America Agreement in Principle*, http://www.justice.gov/crt/about/spl/documents/newark_prinagree_7-22-14.pdf

Step 2: Determining the Number of Incidents to “Trigger” an Alert

After determining which behavioral measures should be included in the EIS, SPD must decide how many times the behavior must occur before “triggering” an EIS alert. For example, if “complaints against an officer” is a variable included in the EIS, then SPD must determine how many complaints must be filed in order for the EIS alert to be triggered.

For some types of serious behaviors, such as an officer’s involvement in a crime, a single incident may be enough to trigger an EIS alert. For example, in the Las Vegas Metropolitan Police Department, an alert is triggered if an officer engages in one incident involving domestic violence, a DUI, or other crime.

For other types of behaviors, there are generally two approaches used:

- **Number of incidents:** One approach requires an alert to be triggered if a certain number of incidents occur during a specified period of time (e.g., an alert is triggered if an officer is involved in three uses of non-lethal force within a 12-month period). A 2014 survey of 274 police agencies across the country found that this was the most common approach taken by respondents.⁴⁸ The threshold levels vary greatly across agencies, even for the same behavioral variable. For example, in the 2014 survey, eight agencies set an alert level at three or more citizen complaints in the preceding three months, while 51 agencies set an alert level at three or more citizen complaints within the preceding 12 months.⁴⁹
- **Agency outliers:** The other approach focuses on officers whose behavior represents an outlier within the agency (e.g., an alert is triggered for officers who receive the most citizen complaints). For example, the San Diego Police Department focuses interventions on officers who scored in the top five percent of any variable. The Portland, OR Police Bureau flags officers if their use of force is at a level three times (or more) greater than the average. And the Los Angeles Police Department flags officers whose scores on use-of-force variables are three standards of deviation above the mean.⁵⁰

Setting appropriate alert levels is a complex process that usually requires adjustments over time. If the threshold is set too low, too many alerts will be issued. This will result in EIS staff being overwhelmed, and has the potential to capture non-problematic behavior.

Conversely, setting alert levels too high will result in too few officers being flagged for attention. This will negate the intended outcome of an EIS by failing to address potential problems and mitigate behavior at an early stage.

⁴⁸ The John F. Finn Institute for Public Safety, Inc. (2015). *Features of Contemporary Early Intervention Systems: The State of the Art*. IACP 2015 Conference, Chicago, IL.

⁴⁹ The John F. Finn Institute for Public Safety, Inc. (2015). *Features of Contemporary Early Intervention Systems: The State of the Art*. IACP 2015 Conference, Chicago, IL.

⁵⁰ The more complex formulae used by LAPD and PPB may result from the fact that both agencies’ EIS function under agreements between those departments and the U.S. Department of Justice. EIS are typically a key feature of any agreement between DOJ and a local police department.

The SPD will need to determine the appropriate trigger alert levels based on its knowledge and experience with its own operations and officers. When determining the threshold levels, SPD should:

- ***Systematically analyze existing data*** to ascertain the frequency and distribution of the events to be included in an EIS. Such analysis should be undertaken with the active involvement of qualified statisticians and analysts. If necessary, SPD should look beyond its own ranks to retain consultants for this project.
- ***Conduct a trial run***, using perhaps six months of data, to experiment with various threshold levels. Such analysis will enable SPD to make *preliminary* determinations as to the number of events that would initiate an alert. As the EIS evolves, further analysis will be needed to make adjustments to either the number of events serving as a trigger for each variable, and/or the time frame (e.g., two use of force events in two months, or three in six months, etc.). Such preliminary analysis can help ensure that post-implementation revisions will likely involve modest adjustments rather than major revisions.⁵¹

Even after the initial thresholds are adjusted, there should be continuing periodic re-examination to ascertain whether further revisions are appropriate.

Step 3: Determining an Officer's Peer Group for Comparison Purposes

Closely related to the question of how many incidents will “trigger” an alert is the question of what group of officers should be used as a benchmark, or peer group, for determining the levels at which alerts are triggered.

Again, there are general approaches for determining an officer's comparison peer group:

- ***Cross-Agency Comparison:*** One approach is to compare officers across the agency, regardless of assignment or unit. This approach is based on the perspective that officers with similar training should demonstrate similar levels of behavior, and any outliers (in terms of uses of force reports, complaints, etc.) should be flagged for supervisory attention. Using this perspective, the threshold indicator levels should be consistent across the agency. For example, the Charlotte-Mecklenburg Police Department and the Prince George's County, MD Police Department use uniform measures across the agency.
- ***Comparison within Unit/Assignment:*** Another approach is to compare officers only with other officers who are working in similar assignments, units, or shifts. This approach is based on the perspective that differences in officers' assignments can have an impact on the officers' potential for certain behaviors. For example, an officer whose duties are primarily administrative and result in minimal interaction with the public will have far fewer occasions than a patrol officer to engage in a pursuit, a use of force, or conduct that might generate a citizen's complaint. Even among officers doing patrol work, an officer working a high-crime area

⁵¹ The time for major modifications is *before* the EIS is formally in place, not after. Massive revisions, post-implementation, will send a message to officers and supervisors alike that this new system was poorly planned, undermining its credibility.

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or a tactical anti-crime assignment has a greater likelihood to encounter an incident in which force will be used than an officer patrolling a low-crime area. This is the approach taken by the San Diego Police Department, which compares each officer to others working the same division and shift.

SPD will have to make its own determination regarding which approach to use. EIS managers should pay close attention to the pertinent findings in the emerging empirical studies of other EIS. Because SPD is a large agency, some degree of peer comparison (as opposed to a department-wide set of thresholds) may be appropriate. **For the largest category of job assignments – patrol officers – SPD may consider starting with having the EIS compare each officer to other officers in the same precinct and shift. SPD can then examine whether this comparison is appropriate as the implementation of the EIS progresses.**

Step 4: Determining the Appropriate Role of Supervisors

Research by PERF and the U.S. Department of Justice has found that the role of sergeants as first-line supervisors in an EIS is absolutely crucial.⁵² These supervisors play many key roles in the EIS process. They are typically the ones who are notified regarding an EIS alert about an officer, who determine whether the alert is indicative of an underlying problem, who discuss the issue with the officer, and who develop the appropriate response.⁵³ Supervisors also document each step of the process.

To ensure that supervisors and others in the department are equipped to handle the new responsibilities that the EIS will bring, SPD will need to take two key steps:

- **Provide EIS Training:** SPD will need to properly train supervisors on the EIS goals, processes, policies, and software. Those in the sergeant's chain of command – lieutenants, captains, etc. – will also need to receive training, as they too will have heightened responsibilities under the new EIS. Training will also need to extend to other units in the SPD that may be impacted. They will need to be fully integrated into the EIS and made aware of management's expectations for those units.
- **Clearly Define Supervisory Roles:** Implementing an effective EIS will require a balance between giving deference to sergeants' decisions regarding personnel who have been flagged in the system, and holding sergeants accountable for their findings. Because sergeants will have a greater familiarity with officers flagged by an EIS, command personnel should grant some degree of deference to a sergeant's findings and recommendations. Routinely overriding sergeants' conclusions can undermine their authority and role within the EIS process. However, command personnel must also hold sergeants accountable by requiring them to detail the basis for their findings and recommendations. For example, if a sergeant meets with an officer who is flagged for having a high number of use-of-force events, and simply reports that the officer is

⁵² Samuel Walker, Stacy Osnick Milligan and Anna Berke (2005). *Supervision and Intervention within Early Intervention Systems: A Guide for Law Enforcement Chief Executives*. Washington, DC: Police Executive Research Forum, and U.S. Department of Justice, Office of Community Oriented Policing Services. https://www.policeforum.org/assets/docs/Free_Online_Documents/Early_Intervention_Systems/supervision%20and%20intervention%20within%20early%20intervention%20systems%202005.pdf

⁵³ Ibid.

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very active and productive, the sergeant's chain of command might require more detailed insights and recommendations.

A comprehensive overview of these supervisors' role can be found in the publication, *Strategies for Intervening with Officers through Early Intervention Systems: A Guide for Front-Line Supervisors*.⁵⁴

Step 5: Determining Which Intervention Options Will Be Available

SPD will need to determine what happens when an officer's supervisor and commander determine that some form of intervention is necessary. An effective EIS will ensure that a wide array of options will be available in these circumstances.

Intervention options may include the following:

- ***Supervisory counseling:*** The sergeant conducts either a formal or informal counseling session, to help guide the officer and modify the behaviors causing concern.
- ***Training:*** The sergeant may determine the officer needs to go through supplemental training to correct a deficiency that leads to the problematic events. Ideally, such training would not necessarily be a repeat of what the officer initially received in recruit training, but would include some aspects customized to address the particular situation.
- ***EAP counseling:*** Personal stressors (e.g., marital difficulties/divorce; terminal illness of a close relative) may affect an officer's on-duty performance. The department, through its first-line supervisors, should be prepared to refer these officers for counseling through the department's employee assistance programs (EAP). Additionally, department leaders need to address "police culture" issues to counter any perceived stigma that might attach to an officer seeking help.
- ***Other counseling:*** In some police agencies, the EAP role may be supplemented by counsel from departmental chaplains or peer counselors. A few agencies also have crisis intervention team (CIT) counseling to assist officers whose performance may suffer because of involvement in particularly traumatic events. Sometimes, these entities may include officers from nearby jurisdictions.⁵⁵
- ***Change of assignment:*** Adverse indicators flagged by an EIS may be the result of an officer working a particular assignment that generates excessive pressure on the officer. In such situations, it is in the department's and the officer's best interests to work out a non-punitive reassignment.

⁵⁴ Samuel Walker, Stacy Osnick Milligan and Anna Berke (2006). *Strategies for Intervening with Officers through Early Intervention Systems: A Guide for Front-Line Supervisors*. Washington, D.C.: Police Executive Research Forum, and U.S. Department of Justice, Office of Community Oriented Policing Services. <https://ric-zai-inc.com/Publications/cops-p093-pub.pdf>

⁵⁵ Samuel Walker, Stacy Osnick Milligan and Anna Berke (2005). *Supervision and Intervention within Early Intervention Systems: A Guide for Law Enforcement Chief Executives*. Washington, D.C.: Police Executive Research Forum, and U.S. Department of Justice, Office of Community Oriented Policing Services. https://www.policeforum.org/assets/docs/Free_Online_Documents/Early_Intervention_Systems/supervision%20and%20intervention%20within%20early%20intervention%20systems%202005.pdf

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- ***Relief from duty:*** Agencies also have the option to grant an immediate short-term relief from duty, although this option is less commonly used. If a sergeant perceives an officer is having an acute, immediate personal crisis, it is in everyone's best interest to allow the officer to go home that day, with appropriate follow-up to EAP or other counseling. EIS training may formalize this and help guide sergeants as to its appropriate use, combined with additional supportive services for the officers.

Whatever options are made available through its EIS, SPD must ensure these options are backed with the resources necessary to do the job. Referring an officer with a serious personal issue to EAP will do little good if there is a long wait before the officer can meet and speak with a counselor for an initial intake interview.

SPD will also have to ensure that the sergeants, in their key role as first-line supervisors, are fully trained on the available alternatives, on when it is appropriate to use each one, and on how to document the process.

The supervisory referral does not end the process. There needs to be follow-up to ascertain whether the recommended action in fact took place, and an assessment of whether it has met its goals.

Step 6: Determining How to Collect and Integrate Data

One of the most difficult tasks in devising an EIS is ensuring that all key metrics such as citizen complaints and uses of force are routinely captured on an automated basis and integrated into the EIS. This is a crucial issue that will require a substantial commitment of IT resources. Thus, top SPD managers will need to ensure that IT managers are fully aware that development of a functional EIS is a core priority for the agency, and are supported with the resources necessary to fulfill that mandate.

There are several factors that can help promote the effectiveness of data collection and integration. First, data are needed on every officer within the agency in order for an EIS to operate as planned. Second, data must be compiled in as close to a real-time basis as possible. Real-time capturing of data will help the SPD better identify patterns and intervene in a timely manner, before a major negative incident occurs.⁵⁶ Third, the SPD should take steps to ensure that the variables to be included in the EIS are tracked through databases – both internal and external – that are linked and able to share information with one another. This is often a challenge in many police agencies, as variables are typically tracked through different systems, including systems outside of the police department (e.g., a court records database).

An intensive review of the SPD's IT and records management systems and capabilities is outside the scope of PERF's review. However, based on experiences in other police agencies, this will be a very important factor as the SPD moves forward. And given changes in data keeping and data management over time, this is another reason why an EIS is a constantly evolving work in progress, not a system that

⁵⁶ Recall the New York Police Department's (NYPD) success in using the COMPSTAT process, beginning in the 1990s. That success occurred in large part because close to real-time analysis of crime reports made it possible for the NYPD, for the first time in its history, on a systematic basis, to identify emerging crime patterns promptly and then devise suitable responses. Previously, crime pattern analyses might flag an "emerging" crime pattern several months after the fact, making any NYPD response out of date.

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is simply put in place and left to function on auto-pilot. Meticulous ongoing attention to the IT component of the EIS is essential.

Step 7: Identifying EIS “Failures of Omission”

As noted above, implementation of an EIS should be considered an ongoing process. One key component of this process should be a regular assessment of “failures of omission,” or instances in which the EIS failed to properly flag an officer who later engaged in serious misconduct or other behaviors that the EIS was intended to address.

For example, SPD should review the career patterns of any officers who were *not* captured by the agency’s EIS but who demonstrate serious job-related performance issues, engage in misconduct that reaches the level of serious disciplinary action, or suffer injury or illness due to the effects of substance abuse or mental health issues. The reviews should focus on two key objectives:

- **Identifying early signs of a problem:** When possible, the reviews should identify any early signs of the problem. Reviews should focus on finding patterns that might have prompted intervention before the problem reached a critical stage.
- **Identifying why the EIS did not capture preliminary indicators of a problem:** Reviews should determine why the EIS did not capture any preliminary signs that the problem existed. SPD should determine how these signs might be better incorporated into the ongoing upgrading of the EIS.

By monitoring failures of omission, the SPD can identify and address gaps that may exist in the system.

Section IV. Other Findings and Recommendations

In addition to its review of SPD's compliance with the COPS Guidelines and the review of the CPHB, PERF identified several additional areas for improvement, outlined below.

Policies and Training Surrounding the Complaint Investigative Process

PERF observed throughout its review a general absence of clear policies and procedures governing aspects of the complaint investigative process. Policies and procedures that do exist often lack meaningful structure and in some cases are outdated, conflicting, and inconsistent with current best practices. It is critical that sound policies and procedures be created governing police conduct, the SPD process for review and adjudication of misconduct complaints, IIU operations and investigative procedures, and the function of the CBPH.

- **Recommendation:** In Section I, we recommended that SPD develop a comprehensive Complaint Reception and Investigation Policy. Below, we provide a template outlining the main content to be included in the policy (see page 67).
- **Recommendation:** SPD should develop an Standard Operating Procedures manual specific to the IIU so that members of the unit will have a clear understanding of all internal affairs processes and operations. This document should clearly outline the role of the IIU lieutenant, sergeants, and administrative personnel, and should include timelines demonstrating how a case should proceed, what forms should be used, and other relevant processes.
- **Recommendation:** SPD should ensure that all newly-assigned IIU investigators are sent to a specialized, reputable internal affairs school or program within their first six months of assignment.
- **Recommendation:** SPD should develop an in-house training program specific to the investigation of officer misconduct that all supervisors responsible for investigating complaints must attend. A component of that program should include being trained on all investigative tools specific to these types of investigations, including crime analysis technology. Sergeants should receive annual refresher training on the complaint investigative process, and new sergeants should receive training on the process upon promotion.

PERF learned that while SPD officers who are at the level of sergeant and above are educated on how to handle a citizen complaint regarding officer misconduct, an officer holding a lower rank would be less likely to know what to do if approached on the street by a citizen.

- **Recommendation:** SPD should provide training to all officers on the intake of citizen complaints of officer misconduct. Training should emphasize that SPD members must document and forward all complaints for appropriate review and investigation to a supervisor, who in turn forwards the complaint to the IIU lieutenant.
- **Recommendation:** SPD should provide training in connection with any policy changes or updates that are implemented within the agency. These trainings could be done through roll calls, informal briefings, or during regularly scheduled in-service training, to ensure that agency members are updated on any changes.

Section IV. Other Findings and Recommendations

Suggested Template: Complaint Reception and Investigation Policy

The Springfield Police Department understands the importance of an effective process to receive and investigate complaints against agency personnel. The success of an agency depends on the integrity and discipline of each employee. This process requires an agency-wide policy to ensure that all employees understand their roles and responsibilities. An outline is provided below that identifies the key areas to be included and a description of what should be covered. When the policy has been finalized and adopted, all SPD personnel should be trained on the policy and the expectations of the Police Commissioner.

Title: Complaint Reception and Investigation

Purpose: The policy should begin with a statement explaining the purpose, which essentially is to inform all employees and the public of the SPD process for receiving, processing, assigning, investigating, and adjudicating complaints against agency personnel.

Policy: This section should detail the procedures for investigating complaints or other employee misconduct, which should be designed to ensure fair, thorough and impartial investigations. This section also should describe how all complaints will be investigated. In addition, this section should include language that describes the agency's process for determining complaint dispositions and subsequent discipline.

Definitions: This section should include all relevant terms specific to the complaint reception and investigation process. Examples of definitions to be included in this section are: the Community Police Hearing Board (CPHB); CPHB Hearing Officers; CPHB Hearing; and the four categories of dispositions: sustained, not-sustained, exonerated, and unfounded.

Complaint Reception: This section should thoroughly describe how complaints from community members or from SPD personnel are received and processed. This should include notification of the Internal Investigation Unit (IIU), description of complaint forms, how to locate and complete the forms, whom to contact, and how the complaint is investigated and ultimately is presented to the police commissioner for a decision. In addition, this section should include responsibilities for officers, sergeants, lieutenants, and IIU personnel during the complaint intake process.

Complaint Assignment: This section should describe SPD's process of assigning a complaint for investigation, including explanation of the differences between a "Special Order" investigation and a "Preliminary Investigation of Employee," and the personnel who are assigned to each type of investigation.

Complaint Investigation: This section should describe how a thorough, fair, and impartial investigation will be conducted, documented, and reviewed. In addition, this section should describe the processes for notifying the complainant and the employee of the status of the investigation.

Time Limits: This section should explain any time limits for receipt of complaints or investigations based on Massachusetts law or union-negotiated agreements.

Section IV. Other Findings and Recommendations

Confidentiality: This section should explain the importance of ensuring the integrity and confidentiality of the complaint, the accused employee's rights, and the investigation process.

Interviews: This section should state that all interviews should be electronically recorded, and should provide guidance to investigators on proper interviewing techniques.

Complaints Alleging Criminal Misconduct: This section should describe the process, assignment, and responsibilities for an allegation of criminal misconduct. In addition, this section should discuss the role of the District Attorney's Office in the criminal investigation process.

Investigation Review Process: This section should describe the process for the review and recommendation of case disposition.

Case Disposition and Hearing Process: This section should describe how complaints are adjudicated, the hearing process by the CPHB and internal hearing boards, and notification of complaint disposition to the accused officer and the complainant.

Responsibilities of the Internal Investigations Unit: This section should describe the roles and responsibilities of the Internal Investigation Unit (IIU).

Investigative Files: This section should describe how all SPD complaints are filed and maintained.

Annual Reporting: This section should describe SPD's process for annually publishing a summary of complaints filed and how cases were adjudicated. This report should be shared with the CPHB and posted on the SPD's website.

PERF's Recommended Complaint Reception and Investigative Process

In this report, PERF has made several recommendations regarding changes to the complaint reception and investigative process. An overview of the proposed changes to the process is described below. PERF developed a process map depicting the new recommended investigative process from intake to final disposition and discipline (see Figure 1, page 70).

Complaint Classification

After initial intake and review of a complaint, the Commissioner should classify it as either an SO, PIE, or Administrative Inquiry (AI). If classified as an AI, the complaint should be sent back to the IIU to gather additional information before a determination is made as to whether the complaint should be investigated formally.

PIE Investigation

After a Preliminary Investigation of Employee (PIE) is conducted by the accused officer's chain of command, the investigative file should be reviewed by the IIU lieutenant for thoroughness. After reviewing the file, the lieutenant may send it back to the officer's chain of command for further investigation if necessary.

Section IV. Other Findings and Recommendations

Applicable Departmental Charges

After an investigation is complete, the IIU lieutenant, in consultation with an attorney from the city Law Department, should determine the applicable charges and alleged policy violations based on the complaint, and list them in a cover memo to the investigative file. The accused officer's captain and deputy chief should review the applicable charges and make a preliminary finding as to the disposition (sustained, not sustained, exonerated, or unfounded). If the complaint is a citizen complaint, a subset of the CPHB should also review the applicable charges and make a preliminary finding. The Police Commissioner should then review the applicable charges and recommendations of the captain, deputy chief, and CPHB to determine a case disposition. If the complaint is sustained by the Commissioner, the IIU lieutenant should draft a letter to the accused officer, advising the officer of the charges and specific policy violations.

Final Disposition and Discipline

If the complaint is a citizen complaint and the officer does not dispute the charges, a subset of the CPHB should make a recommendation to the Commissioner regarding discipline. The Commissioner should then make the final determination regarding discipline.

If the complaint is an internal complaint and the officer does not dispute the charges, the complaint should go directly to the Commissioner to determine discipline.

If the complaint is a citizen complaint and the officer disputes the charges, the complaint should go to a full hearing by the CPHB. This hearing would result in a recommendation to the Commissioner regarding case disposition. After the Commissioner makes the determination regarding final disposition, a subset of the CPHB should make a recommendation regarding discipline. The Commissioner should then make the final decision regarding discipline.

If the complaint is an internal complaint and the officer disputes the charges, the complaint should go to an internal hearing by a board authorized by the Commissioner, appointing a deputy chief to oversee the hearing. This hearing should result in a recommendation to the Commissioner regarding the case disposition, prior to the Commissioner making a final determination. Finally, the accused officer's command chain should make a recommendation to the Commissioner regarding discipline, and the Commissioner should make the final decision regarding discipline.

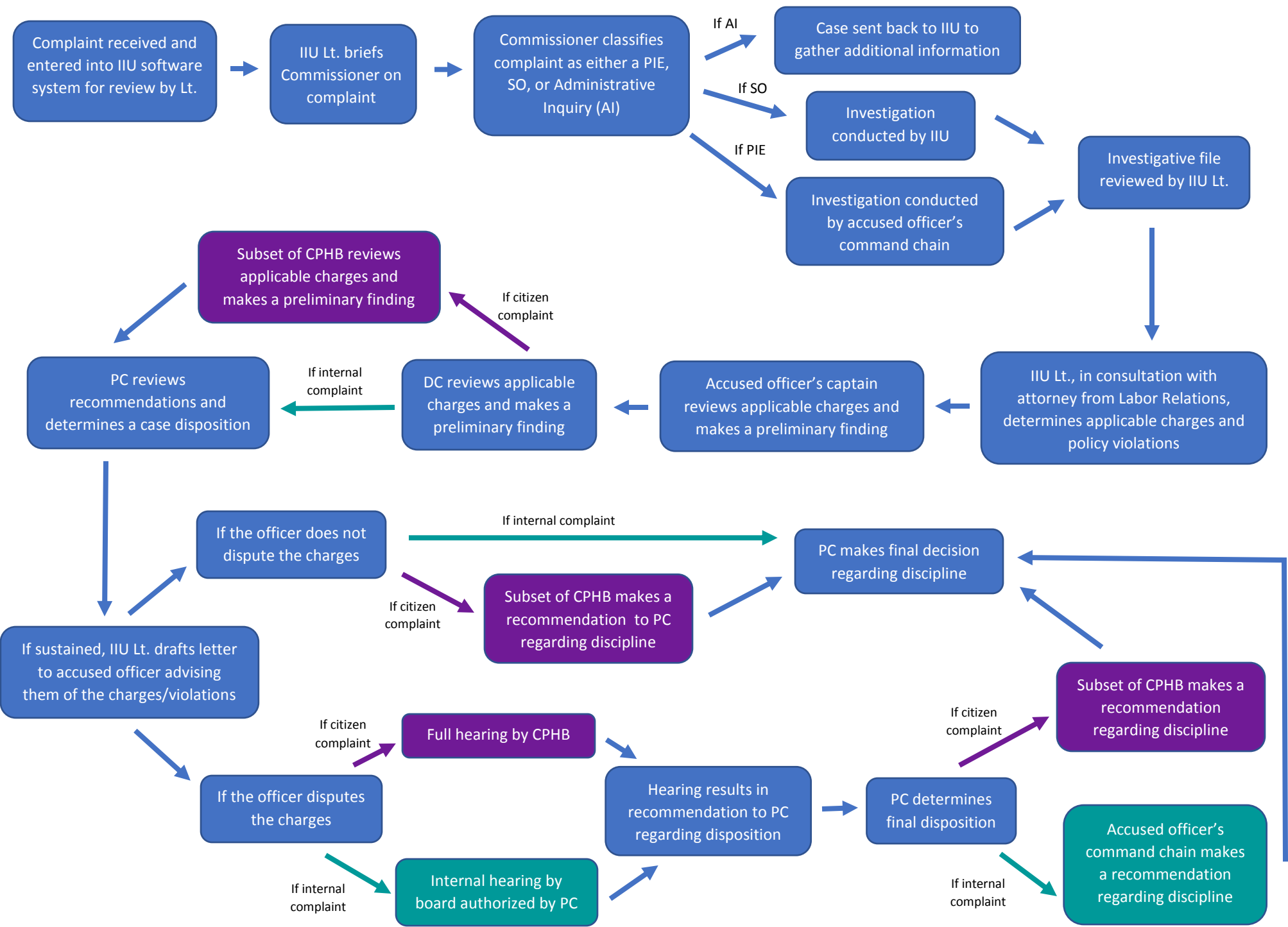


Figure 1: PERF's Recommended Complaint Reception and Investigative Process

Public Education

Although the process by which a complaint can be received by SPD is fairly comprehensive, it appears that communication to the public about the ways in which citizens can make a complaint could be improved. Some members of the City Council, for example, were unaware that the form to file a complaint of officer misconduct was available online or that a complaint could be made anonymously.

In addition, SPD should consider including more information on its website about the role of the CPHB and IIU, to help ensure that the public is aware of the various services provided by these groups.

- **Recommendation:** SPD should provide information to the City Council about the complaint investigative process and should partner with the Mayor's Office to conduct community outreach, to educate the public about SPD complaint processes.
- **Recommendation:** In addition to providing the annual report generated by IIU on the Law Department's website, the report should also be accessible from SPD's website.

Securing Firearms During Interviews and Hearings

PERF learned that SPD currently has no policy in place to require officers to secure their firearms during interviews or hearings for internal affairs investigations. Because these situations can be tense or stressful for officers, PERF recommends that the accused officer's firearm should be secured during these instances to ensure the safety of all involved.

- **Recommendation:** SPD should develop policy stating that when an officer is being interviewed during an investigation or is having a hearing with the CPHB, the accused officer should not be carrying a firearm. The accused officer's firearm should be secured during these meetings, and this should be stated in the letter notifying the officer about the complaint.

Staff Inspections

Routine internal inspections are an important accountability mechanism. Inspections can help to determine whether a department's procedures and policies are being properly implemented, whether resources are used wisely, and whether there are any deficiencies in areas such as training and supervision.⁵⁷ Progressive police department management benefits from a comprehensive and robust inspections process.

- **Recommendation:** SPD should establish a staff inspections unit to conduct quality assurance inspections of all aspects of the agency. Administrative inspections of each SPD component should occur at least every three years, or as required by the Police Commissioner. Inspections would examine areas such as SPD facilities, administration, files, information systems, personnel, operations, and reporting practices. In addition, the staff inspections unit could conduct audits of complaint intake, to verify that complaints are being taken properly, or compliance audits to determine whether agency policies regarding documentation of complaints are being properly followed. PERF is currently working with SPD to review its policies and procedures to ensure certification with the Massachusetts Police Accreditation Committee

⁵⁷http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=470&issue_id=12
2004

Section IV. Other Findings and Recommendations

(MPAC). If SPD establishes a staff inspections unit, this unit could oversee the accreditation process.

- **Recommendation:** SPD should assign a sergeant to both manage the staff inspections unit and oversee the SPD's state certification process. This would be a fulltime position, and SPD should conduct a review to determine whether a current sergeant could be assigned to this role, or whether a new fulltime sergeant position should be added to its authorized staffing levels. Once the staff inspections unit is established, SPD should plan to add an additional sworn officer or civilian support staff member to the unit to provide assistance to the sergeant.
- **Recommendation:** Upon conclusion of an inspection, the staff inspections unit should brief the appropriate commanding officer of its findings so that the commanding officer can undertake corrective actions. The staff inspections unit should prepare an official report to be submitted to the Police Commissioner within 30 days of the inspection, and follow-up inspections should be conducted as needed.

Conclusion

The Springfield Police Department (SPD) is at a critical juncture. In April 2018, the U.S. Department of Justice’s Civil Rights Division launched an investigation of whether there is a “pattern or practice” of excessive use of force in the department. In October, federal prosecutors announced indictments against a current officer and a former officer for allegedly violating the civil rights of arrestees in a 2016 incident. In February 2019, the Massachusetts Attorney General’s Office charged five officers with assault and other offenses in a 2015 incident. And the Springfield City Council is in the midst of a dispute with the Mayor about whether the council has the legal authority to create a civilian police commission to oversee key functions of the Police Department, including the hiring, firing, and disciplining of officers and the writing of department policies and procedures.

As part of an effort by city leaders to undertake reforms of the Police Department, the Police Executive Research Forum (PERF) in 2018 was asked to conduct a review of the SPD’s internal affairs policies and practices. **PERF was not tasked with reviewing case files of internal affairs investigations; rather, PERF was asked to compare SPD’s internal affairs policies and practices with a set of model guidelines that were developed by the U.S. Department of Justice, in order to determine whether SPD policies and practices are consistent with national best practices.** Many of these internal affairs policies and practices are about ensuring that the Police Department thoroughly and fairly investigates all complaints from community members about police actions.

PERF also was tasked with reviewing the effectiveness of the current Community Police Hearing Board, which provides a role for the community in reviewing citizen complaints about the police.

In commissioning PERF’s review of the Police Department, Springfield city leaders have demonstrated a desire to strengthen community trust in the police and to update the Police Department’s policies and practices. The Police Department has already begun to make a number of reforms that are consistent with recommendations in this report, and has expressed an eagerness to receive PERF’s report so it can move forward with other recommendations.

Internal affairs policies and practices: As detailed in this report, PERF found that in large measure, SPD’s internal affairs *practices* are in compliance with the DOJ best practices guidebook. However, SPD can benefit from establishing clear, written *policies and procedures* governing the complaint investigative process. SPD also should conduct *training* to ensure that all members of the department are adequately prepared to handle complaints in a uniform way.

PERF also identified several opportunities to improve the structure of the Police Department’s Internal Investigations Unit (IIU). For example, SPD should establish a direct line of communication from the IIU lieutenant to the Police Commissioner, to ensure the unit has unrestricted and prompt access to the agency head. SPD should also consider imposing a set term that an officer may serve in the IIU. This will prevent investigators from becoming emotionally drained and will allow multiple officers throughout the agency to gain experience in the unit.

Community Police Hearing Board: Regarding the Community Police Hearing Board, PERF found that the Board is a valuable mechanism that provides a role for the community in the investigation of citizen complaints. However, PERF’s review revealed that board members could benefit from additional

Conclusion

training on their role and law enforcement operations. PERF recommends that at least three members of the CPHB be former law enforcement investigators, so there will be representatives with police experience present during all phases of the review process. The chair of the board should be a retired judge or respected attorney with trial experience.

PERF also recommends that the City of Springfield develop a clear mission statement for the board, with clear written procedures governing each stage of the process. PERF also recommended certain changes in the “process map” (see page 70) defining how various types of investigations move back and forth between SPD investigators, the CPHB, and the Police Commissioner.

Automated data collection and creating an Early Intervention System: PERF recommends that SPD develop an automated case management system that will document every complaint received by the Police Department and the outcome of the investigation of each complaint. Many police agencies nationwide have such computer systems – not only to track citizen complaints, but also for the broader purpose of creating an Early Intervention System (EIS) that can provide the department with automated alerts about possible problems with an officer’s behavior. An EIS is designed to detect issues of concern early, before they can worsen to the level of serious misconduct. EIS systems can track a dozen or more indicators, such as uses of force by an officer, citizen complaints, any lawsuits citing the officer, excessive use of sick leave, disciplinary actions against the officer, traffic accidents involving the officer, etc.

An EIS could help SPD to identify potential areas of concern in officer behavior and address them through training, counseling, or other non-punitive measures before serious misconduct occurs. PERF provided information to SPD on how an EIS works, the benefits of EIS, how to build support for EIS among agency leaders and personnel, as well as how to design and implement an EIS.

Oversight, Accountability, and Citizen Involvement: PERF is aware that the Springfield City Council has voted to establish a new civilian police commission that would have authority over key issues such as hiring, firing, and disciplining of officers and writing policies and procedures for all police operations.

Advocates of a civilian board of police commissioners argue that a board would provide a higher level of civilian oversight of the police department in Springfield. However, Springfield’s Community Police Hearing Board already has the authority to review citizen complaints, make recommendations, and conduct hearings regarding the complaints.

A number of cities across the nation have Boards of Police Commissioners that provide general oversight of police departments. This can be a worthwhile method of providing civilian input into major decisions about a city’s approach to controversial issues, such as the role of the police in immigration enforcement. However, under the legislation approved by the Springfield City Council, the Board of Police Commissioners would have far greater authority to run key aspects of the Police Department on a day-to-day basis, including “the appointment, management, and control of the members and employees of the Police Department,” as well as “the regulation, government, and discipline of such members and employees,” and all “rules and regulations for the government and discipline of the Police Department.”

PERF is unaware of any Police Department operating under such a system, and believes that this system would be unworkable, particularly considering the fact that police chiefs make important decisions

Conclusion

about critical incidents on a daily basis, but the legislation approved in Springfield would require only that the Board of Police Commissioners meet “at least once a month.”

Furthermore, unlike a board of civilian commissioners, a police commissioner is directly responsible for the daily work of the Police Department and can be held accountable for actions taken by the Police Department. **A five-member board of civilians could result in less accountability, because no one person could be held responsible for police operations.**

In any situation in which a critical incident might be handled poorly or result in a bad outcome, it would be unclear who should be held accountable – the chief executive of the Police Department, or one or more of the members of the Board of Police Commissioners. It is impossible to have accountability if no one is designated to have responsibility for decisions.

PERF believes that SPD needs two kinds of oversight – citizens providing input, and an executive who has the responsibility and authority to hold members of the Police Department accountable. Citizen input can be provided through Springfield’s existing Community Police Hearing Board. And accountability can be provided by a strong Police Commissioner who retains responsibility for hiring, firing, discipline, and policy and procedures.

Looking forward: The Springfield Police Department is poised to undertake important reforms to improve its internal affairs investigations, to respond more consistently to citizen complaints, and to monitor officers’ performance more closely in order to detect problematic behaviors before they rise to the level of serious misconduct. SPD leaders have expressed a commitment to move forward expeditiously with reform measures. This report is intended to provide a roadmap to implementing improvements in several key areas.

Appendix A: Sample Discipline Matrix – City of Madison Police Department



**CITY OF MADISON POLICE DEPARTMENT
STANDARD OPERATING PROCEDURE**



Professional Standards and Internal Affairs Discipline Matrix

Eff. Date 06/08/2018

Purpose

This procedure outlines the guidelines and expectations for the Madison Police Department's (MPD) response to complaints and the steps involved in the investigation of complaints. Investigatory responsibilities, the Police Bill of Rights and the Seven Steps for Just Cause are also detailed. This procedure begins with a description of the Discipline Matrix. A police discipline matrix aims to achieve consistency in discipline and to eliminate the appearance of disparity. This matrix does not remove discretion; it provides a range of possible sanctions, thus providing clarity.

Procedure

The matrix lists both code of conduct violations and Standard Operating Procedural (SOP) violations. It then provides sanction categories **A** through **E**. The least punitive sanctions are category **A**, with sanctions becoming more severe as the categories progress to category **E**.

In each category, there is a recommended guideline of sanctions. These guidelines are based on comparable sanctions for each violation from Professional Standards & Internal Affairs (PSIA) cases in years past.

This matrix captures most violation sanctions that have occurred in the past 25 years. There are code of conduct/procedural categories that are not covered in this matrix. There is the expectation that all policies and procedures will be followed. MPD understands that as times change, policies and expectations will change, and there will be violations that are not covered on the matrix. These violations shall be added to the matrix as deemed appropriate. For code of conduct violations not specified on the matrix, the sanction will be determined by the Chief of Police.

Sanction Categories

Category A	Category B	Category C	Category D	Category E
<p>Conduct violation in a single incident that has a minimal negative impact on the operations or reputation of the MPD. Sanctions listed in the below categories are not considered discipline. Sanction guidelines may include:</p> <ul style="list-style-type: none"> • Verbal Counseling • Mediation • Documented Counseling <p>A single sanction or a combination of the above listed sanctions may be deemed appropriate. Training and/or Work Rules can also be ordered in conjunction with any sanctions listed above.</p>	<p>Violations that have more than minimal impact on the operations or reputation of the MPD or that negatively impacts relationships with other officers, agencies or the public. This includes repeated acts from Category A within time frames listed below. Sanction guidelines may include thereof:</p> <ul style="list-style-type: none"> • Verbal Counseling • Mediation • Documented Counseling • Letter of Reprimand (First Level of Discipline) <p>A single sanction or a combination of the above listed sanctions may be deemed appropriate. Training and/or Work Rules can also be ordered in conjunction with any sanctions listed above.</p>	<p>Violations that have a pronounced negative impact on the operations or reputation of the MPD or on relationships with employees, other agencies or the public. This includes repeated acts from Category B within time frames listed below. Sanction guidelines may include:</p> <ul style="list-style-type: none"> • Letter of Reprimand • Suspension without pay for one to five days <p>A single sanction or a combination of the above listed sanctions may be deemed appropriate. Training and/or Work Rules can also be ordered in conjunction with any sanctions listed above.</p>	<p>Violations that are contrary to the core values of the MPD or that involve a substantial risk of officer or public safety. This includes repeated acts from Category C within the time frames listed below. Sanction guidelines may include:</p> <ul style="list-style-type: none"> • Suspension without pay for five to fifteen days <p>Training and/or Work Rules can also be ordered in conjunction with any sanctions listed above.</p>	<p>Violations that are contrary to the core values of the MPD. This includes acts of serious misconduct or acts of criminal conduct. This also involves any conduct that will effectively disqualify an employee from continued employment as a law enforcement officer. Sanction guidelines may include:</p> <ul style="list-style-type: none"> • Suspension without pay for fifteen days or more • Reduction in rank • Separation from service <p>Training and/or Work Rules can also be ordered in conjunction with any sanctions listed above.</p>

Repeated Acts

Repeated acts of category **A** violations within **one year** will increase the repeated violation into category **B**.

Repeated acts of category **B** within **two years** will increase the violation to category **C**.

Repeated acts of category **C** within **three years** will increase the violation to category **D**.

Repeated acts of category **D** within **five years** will result in **separation of service**.

This matrix does not apply to employees with a last chance agreement.

The matrix categories may not be sequentially followed in cases where there may be a number of violations or in cases where there are particularly egregious circumstances. The matrix is considered a guideline only and it is within the Chief of Police's discretion to deviate from the matrix based on the individual case.

Discipline Matrix

Corresponding Code of Conduct Manual Listing <i>Categories skipped have not had recent previous discipline associated.</i>		Category				
		A	B	C	D	E
2.	Truthfulness					
	Failure to be truthful.					X
	Employees shall not make false reports or knowingly enter false information into any record.					X
3.	Performance of Duties					
	Failure to respond to dispatch.		X			
	Failure to properly perform duties assigned.		X			
	Failure to respond to subpoena or scheduled training.	X				
	Failure to comply with SOPs (excludes property handling code of conduct).	X				
	Failure to meet expectations of special initiatives.	X				
	Failure to notify supervisor of custodial arrest.	X				
	Failure to obtain supervisor approval for strip search.			X		
	Failure to assist backup officers.			X		
	Failure to make an effort to check email and mailbox once per shift and respond accordingly.		X			
	Failure to pursue flagrant law violations that they are aware of.		X			
	Engaging in activity on duty that does not pertain to MPD business.		X			
	Employees shall not sleep, idle or loaf while on duty.		X			
	Supervisors shall not knowingly allow employees to violate any law, code of conduct or procedure.			X		
	All employees shall report fit for duty.				X	
All MPD members shall not be impaired as a result of any drug usage or alcohol. All employees are prohibited from having any measurable amount of alcohol in their system while on-duty. No MPD member shall consume or purchase any intoxicants while in uniform. No MPD member shall consume intoxicants while armed except with the approval of the Chief of Police. It is the responsibility of the employee to consult with their physician to determine their fitness for duty based on their medical condition and/or prescribed treatment.				X		
4.	Absence from Duty					
Employees shall not be late or absent from duty without prior permission from a supervisor or the Officer in Charge (OIC).		X				

Appendix A: Sample Discipline Matrix – City of Madison Police Department

Corresponding Code of Conduct Manual Listing <i>Categories skipped have not had recent previous discipline associated.</i>		Category				
		A	B	C	D	E
5. Unlawful Conduct	Employees shall not engage in conduct that constitutes a violation of criminal law, or ordinance corresponding to a state statute that constitutes a crime.				X	
	Employees convicted of first offense OWI.			X		
	Failure to immediately notify a supervisor whenever investigating an incident involving a law enforcement officer who is a suspect in any criminal activity or OMVWI.			X		
6. Notification Required of Law Enforcement Contact	Failure to notify of contact by any law enforcement agency regarding their involvement as a suspect, witness, victim or contact in criminal conduct, violation of municipal ordinance for which a corresponding state statute exists (ex. OWI or Hit and Run). The employee SHALL report the incident to their commanding officer or the OIC within 24 hours of the contact, or their return to duty, whichever comes first. This must be done in person or via telephone.		X			
7. Equal Protection	Employees shall not show bias based on relationships in investigative decisions, or assist in investigations or enforcement decisions.		X			
	Employees are prohibited from interfering in the normal processing of traffic/parking citations or otherwise disrupting enforcement of the law by other members of the MPD. If a supervisor orders a change in an enforcement decision and a subordinate feels it is wrong, it should be reported to a commanding officer.		X			
9. Harassment	Employees shall not engage in harassment or to retaliate against an employee who reports such harassment. (For definition of harassment, see APM 3-5.)			X		
	Supervisors shall not allow employees under their command to engage in harassment or permit retaliation against an employee who reports such harassment.			X		
	Employees shall not engage in sexual harassment, this includes unwanted sexual advances.			X		
10. Courtesy, Respect and Professional Conduct	Failure to be courteous to the public and to coworkers and shall avoid the use of profane language or gestures. Employees shall also avoid actions that would cause disrespect to the MPD.		X			
	Employees shall not act so as to exhibit disrespect for a supervisor.		X			
	Employees shall not speak derogatorily to others about orders or instructions issued by supervisors.		X			
	Employees shall use police communications systems, email, radio only for official police business and shall exhibit courtesy during the transmission of all messages.		X			
11. Public Criticism	Employees shall not publicly criticize the operations or personnel of the MPD if such criticism undermines the discipline, morale or efficiency of the MPD. This applies both on duty and off duty.		X			
12. Use of Force	9A Employees shall not use deadly force when a lesser degree of force was reasonable.					X
	9B Employees shall not use excessive force when a lesser degree of force was objectively reasonable.				X	
13. Vehicle Operation	Employees shall operate city vehicles with due regard for safety.			X		

Appendix A: Sample Discipline Matrix – City of Madison Police Department

Corresponding Code of Conduct Manual Listing <i>Categories skipped have not had recent previous discipline associated.</i>		Category				
		A	B	C	D	E
14.	Insubordination Failure to promptly obey lawful orders from any supervisor. This includes violations of work rules. If these orders conflict with code of conduct or procedure, the ordered member shall call attention to this conflict. Any unlawful orders shall be promptly reported to the Chief of Police.			X		
16.	Criminal Association Failure to avoid regular or continuous associations or dealings with persons known to be engaged in ongoing criminal activity, under indictment, on probation, parole, house arrest or Huber. Association consists of more than a single occurrence.			X		
20.	Cooperation with Investigations Required Failure to cooperate in internal investigations of alleged misconduct, illegal activity or code of conduct violations. This includes failure to answer questions or submit to proper investigative techniques.					X
21.	Access to Police Records Employees shall not access MPD official records for any reason inconsistent with their professional duties.			X		
	Employees shall not release official records of the MPD for reasons inconsistent with their professional duties.			X		
	Employees shall not tamper with any MPD records system.			X		
STANDARD OPERATING PROCEDURES						
SOP	Transportation and Treatment of Prisoners Failure to take all reasonable precautions necessary to secure and safely transport prisoners in accordance with SOP.		X			
SOP	Status Changes Failure to report changes in address or telephone number within 24 hours after making such changes by submitting in writing the changes to the Chief of Police's Office, their commanding officer and the shift OIC. All employees shall maintain a working telephone number. Officers shall promptly notify their commanding officer if their drivers license status changes.	X				
SOP	Search and Seizure Failure to obtain Command Approval for search warrants for any building or dwelling. This does not include search warrants for property or vehicles that are already in MPD custody. Tactical execution of warrants will only be performed by personnel with appropriate training and who are in uniform or otherwise clearly identifiable as police officers.		X			
SOP	Police Weaponry Failure to adhere to the specifics of this procedure as described in the SOP.		X			
SOP	Firearms Safety Employees who have been trained in MPD firearms safety shall strictly adhere to all safety guidelines when handling firearms to prevent unintentional discharges. This applies both on and off duty.			X		
	Unintentional discharge on the range line (no injury or horseplay).		X			
	Failure to ensure the security and safe storage of MPD approved weapons. This applies both on and off duty.		X			

Appendix A: Sample Discipline Matrix – City of Madison Police Department

Corresponding Code of Conduct Manual Listing <i>Categories skipped have not had recent previous discipline associated.</i>		Category				
		A	B	C	D	E
SOP	Use and Care of City-Owned Property		X			
	Failure to adhere to prescribed procedures for check out and use of any MPD owned property. Members of the MPD are responsible for the good care of MPD property and shall promptly report to their supervisor in writing the loss of, damage to or unserviceable condition of such property.		X			
	Unintentional discharge of electronic control device if it occurs in the armory during the check out process and no injuries (documented counseling).	X				
	Failure to drive city owned vehicles with due regard for safety at all times.			X		
	Employees shall not use any MPD property for private purposes unless permission is first obtained from the Chief of Police.		X			
SOP	Property Handling		X			
	Failure to take all precautions necessary to guarantee proper handling of evidence and any property seized, received or found and shall conform to MPD procedure for handling and disposition; a written record of the property disposition shall be included in the employee's report.		X			
	Destruction of property without following normal tagging procedures.			X		
	Failure to adhere to the specifics listed in detail in this SOP.		X			
SOP	Personal Appearance					
	Failure to adhere to personal appearance code of conduct described in the SOP.	X				
SOP	Identification of Employees					
	Failure to identify with name, rank and employee number when requested to do so. Plain clothes officers will ID themselves with badge and ID card.		X			
SOP	Reporting					
	Failure to write accurate and complete reports and reports shall be completed promptly.		X			
	Failure to complete reports in all arrests, use of force, stops, frisks, criminal investigations, property/evidence handling and other cases outlined in SOPs.		X			
SOP	TIME System Access					
	TIME system access will be in strict compliance with their procedures and information gleaned shall be disseminated in accordance with the SOP.		X			
SOP	Stop and Frisk					
	Failure to adhere to the specifics listed in this SOP.	X				
SOP	Searches					
	Failure to adhere to the specifics listed in this SOP.		X			
SOP	Handling of Evidence, Contraband, Found or Lost Property					
	Failure to adhere to the specifics listed in this SOP.	X				
SOP	Use of Mobile Data Computers					
	Failure to adhere to the specifics listed in this SOP.		X			
SOP	Off-Duty Officer Responsibilities					
	Failure to adhere to the specifics found in the SOP.		X			
SOP	Traffic/Parking Enforcement and Crash Investigation					
	Failure to promptly report to an on-duty supervisor any accident with damage to any city owned motor vehicle operated by them or in their charge. An employee shall request a field supervisor be dispatched to supervise any accident investigation.		X			
SOP	Outside Employment					
	Failure to adhere to the specifics as described in the SOP.	X				
SOP	In-Car Video System					
	Failure to log into squad video system		X			
	Failure to sync in-car video microphone		X			
	Failure to wear microphone		X			

Corresponding Code of Conduct Manual Listing <i>Categories skipped have not had recent previous discipline associated.</i>		Category				
		A	B	C	D	E
SOP	Social Media – Off Duty Failure of personnel to appropriately represent MPD honestly, respectfully, and/or legally while on- or off-duty through the use of social media. Personnel are expected to represent the Core Values of the MPD at all times even when using the internet for personal purposes.		X			
SOP	Emergency Vehicle Operation					
	Unauthorized Pursuit.		X			
	Improper Use of Warning Devices and Other Safety Equipment.		X			
	Failure to Operate With Due Regard.			X		
	Improper or unsafe routine vehicle operation maneuver.		X			
SOP	Police Vehicle Parking					
	Failure to adhere to the specifics listed in this SOP.		X			
SOP	Domestic Abuse					
	Failure to Complete a Required Report Where No Arrest.		X			

See Code of Conduct manual and SOPs for detailed description of code of conduct/procedures. The above-described policies/procedures are general summaries and are not meant to be all inclusive.

Not all policies are listed in the matrix, however, all code of conduct/procedural violations will be enforced.

Sanction Options in Internal Investigations

These levels **are not considered formal discipline**:

1. Verbal Counseling.
2. Training.
3. Mediation - in minor complaints, if both parties are MPD employees and mutually agree, mediation will be arranged through Employee Assistance Program (EAP) using a professional mediator.
4. Work Rules.
5. Documented Counseling.

The levels covered below **are considered formal discipline** and are placed in the employee’s personnel file:

1. Letter of Reprimand.
2. Suspension without Pay.
3. Reduction in Rank.
4. Separation of Service.

Restorative Performance Initiative

MPD employees who have received a Letter of Reprimand (considered discipline) may be eligible for Restorative Performance if they have not received documented sanctions in the past. This is based on the Chief of Police’s discretion. By taking part in Restorative Performance, the Letter of Discipline may be reduced to Documented Counseling (not considered discipline).

The following are requirements for successful completion of the Restorative Performance Initiative:

- No prior sustained cases.
- Offered at the Letter of Reprimand level of discipline.
- Officer will attend training in a field related to what Code of Conduct, Standard Operating Procedure, or City APM was violated.
- Officer will provide a written summary of the training attended and demonstrate knowledge learned.
- No additional Code of Conduct, Standard Operating Procedure, or City APM violations that result in discipline within one year from date of agreement.

An employee who is participating in the Restorative Performance Initiative will have the PSIA case held in “open” status for one year. If the above listed requirements are met after one year, the Letter of Reprimand is amended to Documented Counseling and the case status will be removed from the employee’s personnel file.

If the employee is unsuccessful in completing the program, the discipline will be maintained as a “Letter of Reprimand.”

Multiple Violations

In cases where there may be multiple code of conduct/procedural violations involved with a single investigation, each violation may receive a separate and distinct sanction.

Police and Fire Commission (PFC)

The PFC is established by Wis. Stats. Sec. 62.13. The PFC appoints all commissioned officers and establishes hiring guidelines. Charges may be filed against an officer by the Chief of Police, member of the PFC or by any aggrieved party. These charges may request that an officer be reduced in rank, suspended or removed. Under the statute, the PFC shall hold a hearing on the charges and evidence shall be presented. After the presentation of evidence, the PFC must determine that the seven just causes (outlined in Wis. Stats. Sec. 62.13(5)(3m)) have been met. If the PFC determines there is just cause to sustain the charges, the PFC may suspend, reduce in rank, suspend and reduce in rank or remove the officer.

Rights of the Chief of Police/Right of Deviation

The Chief of Police reserves the right of suspension, transfer of assignment and extension of probation, counseling, alcohol/drug assessment, psychiatric evaluation, fitness for duty evaluation, or any other training, treatment or evaluation reasonably deemed necessary by the Chief of Police, in certain cases. The Chief of Police also reserves the right to file charges with the PFC as outlined above. The Chief of Police also reserves the right to terminate civilian employees for just cause.

The Chief of Police or designee will approve all discipline.

The Chief of Police reserves the right to hold suspension days in abeyance.

The Chief of Police reserves the right to deviate outside the recommended Matrix guidelines. If a deviation occurs, the factors leading to the deviation shall be addressed in the discipline notice to the employee. Deviation may be based on mitigating or aggravating factors.

The Chief of Police will make the final determination of disposition.

EXAMPLES OF MITIGATING AND AGGRAVATING FACTORS

Mitigating factors include but are not limited to:

- Ordered by supervisor.
- Mistake of facts.
- Necessity.
- Unintentional.

Aggravating Factors include but are not limited to:

- Inappropriate use of force.
- Personal motive.
- Intoxication.
- Conspiracy.

- Criminal conduct.
- Deception.
- Intentional act.

Nothing in this code of conduct shall be construed to limit the management prerogative of the Chief of Police, nor any other supervisory officer, to take corrective action whenever appropriate.

The Chief of Police may file formal charges against an employee, with the appropriate authorities, irrespective of an internal investigation.

Civilian Employees

All employees are expected to adhere to the MPD code of conduct, SOPs, city administrative procedural memoranda (APMs) and the City of Madison Employee Benefits Handbooks. This discipline matrix is not meant to cover civilian employees of the MPD. Discipline matters resulting from a sustained finding involving non-commissioned personnel follow the overall City of Madison Personnel Rules.

In situations where there is a conflict between the MPD Code of Conduct, SOP, APM or the Employee Benefit Handbook the most stringent rule, code, guideline shall apply.

Probationary Police Officers

This matrix SOP may not apply to probationary police officers whose employment status is subject to their probationary performance.

Original SOP: 02/27/2015

(Revised: 02/29/2016, 03/21/2016, 01/06/2017, 06/15/2017, 07/06/2017, 12/06/2017, 06/08/2018)

Appendix B: Sample Discipline Matrix – Austin Police Department

Policy
903

Austin Police Department
Policy Manual

Discipline Matrix

903.1 PURPOSE AND SCOPE

The Discipline Matrix is designed as a guide to be used in conjunction with Policy 902 (Administrative Investigations). This matrix is not an all-encompassing document, but should provide some guidance for the vast majority of investigations involving discipline. As a general rule, those violations below that are listed as IS (Indefinite Suspension), Fact Specific, or those that may include discipline greater than a 15-day suspension will be investigated by Internal Affairs.

Discipline Matrix

Violation	Policy Manual Reference	1st Occurrence	2nd Occurrence	3rd Occurrence
Required reporting of violations	900-General Conduct and Responsibilities 900.2	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Requirements of duty	900-General Conduct and Responsibilities 900.4	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Time and attention to duty	900-General Conduct and Responsibilities 900.4	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Unprofessional or abusive behavior to coworkers	900-General Conduct and Responsibilities 900.5	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Duty to Identify	900-General Conduct and Responsibilities 900.4.4	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Improper use of city resources <u>not</u> involving personal gain	1000 - Department Technology Use 1000.3.1	Written Reprimand to 1-3 Days	Increased one level	Increased one level
Improper use of city resources involving personal gain	900 - Employee Speech, Expression, and Social Networking 972.4	4-15 Days	Indefinite Suspension	
Confidentiality	900-General Conduct and Responsibilities 900.3.5	4-15 Days	Indefinite Suspension	
Criminal violation while on duty or related to job duties	900-General Conduct and Responsibilities	Indefinite Suspension		
Driving While Intoxicated	900-General Conduct and Responsibilities	Indefinite Suspension		
Other criminal violations	900-General Conduct and Responsibilities	Fact Specific		
Dishonesty (false official statements)	900-General Conduct and Responsibilities 902.4.1	Indefinite Suspension		
Neglect of Duty (misleading statements)	900-General Conduct and Responsibilities 902.4.1	Fact Specific		
Duty to take action	900-General Conduct and Responsibilities 900.4.1	Fact Specific		

Austin Police Department Policy Manual

Discipline Matrix

Discipline Matrix, Cont.

Violation	Policy Manual Reference	1st Occurrence	2nd Occurrence	3rd Occurrence
Dereliction of Duty	900-General Conduct and Responsibilities	4-15 days to Demotion	Demotion to Indefinite Suspension	
Neglect of duty	900-General Conduct and Responsibilities 900.4.1	Fact Specific		
Association with those of ill repute	900-General Conduct and Responsibilities 900.3.3	Fact Specific		
Failure to properly investigate a complaint and/or forward an external complaint contact form to Internal Affairs	902.2.5- Administrative Investigations	15 days up to Indefinite Suspension	Indefinite Suspension	
Courtesy (rudeness complaints)	301-Responsibility to Community 301.2	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Impartial attitude	301-Responsibility to Community 301.2	Fact Specific		
Insubordination	110-Organizational Structure and Responsibility 110.4.4	4-15 Days	Indefinite Suspension	
Refusing to cooperate with Internal Affairs	902-Administrative Investigations 902.6	Indefinite Suspension		
Quid pro quo sexual harassment	914-Discrimination and Harassment 914.3.2	Indefinite Suspension		
Failure of Random drug test or test resulting from reasonable suspicion	916-Drug and Alcohol Free Workplace 916.2.3	Indefinite Suspension		
Missed court appearance	935-Court Appearances	Oral Counseling (documented in Field Notes)	Conduct Counseling Memorandum	Written Reprimand to 1-3 Days
Secondary employment violations	949-Secondary Employment 949	Written Reprimand to 1-3 Days	Increased one level	Increased one level
Abuse of sick leave	955-Attendance and Leave Policy 955.7	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Failure to properly investigate	401-Preliminary Field Investigations, 403-Follow-Up Investigations	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Improper handling of evidence (not related to criminal conduct)	701-Property and Evidence	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Improper destruction of evidence	701-Property and Evidence 701.2	Written Reprimand to 4-15 Days	Increased one level	Increased one level

Austin Police Department Policy Manual

Discipline Matrix

Discipline Matrix, Cont.

Violation	Policy Manual Reference	1st Occurrence	2nd Occurrence	3rd Occurrence
Biased based profiling/Racial Profiling	328-Biased Based Profiling 329-Racial Profiling	Fact Specific		
Electronic Recording (DMAV, MAV) violation	303 & 304-Mobile Audio Video Recording Operation	Written Reprimand to 1-3 Days	Increased one level	Increased one level
Intentional Electronic Recording (DMAV, MAV) violation	303 & 304-Mobile Audio Video Recording Operation	4-15 Days	Indefinite Suspension	
Intentional Electronic Recording (DMAV, MAV) violation at a criminal incident	303 & 304-Mobile Audio Video Recording Operation	Indefinite Suspension		
Inappropriate electronic messages *	305-Radio and Mobile Data Computer Use 305.2	Written Reprimand	1-3 Days	4-15 Days
Internet/Computer violations	1000 & 1002-Department Technology Use	Written Reprimand to 1-3 Days	Increased one level	Increased one level
Objectively unreasonable use of deadly force	Chapter 2-Response to Resistance	Indefinite Suspension		
Objectively unreasonable use of force	Chapter 2-Response to Resistance	Fact Specific		
Preventable discharge involving serious bodily injury or death	Chapter 2-Response to Resistance	Fact Specific		
Unintentional discharge involving serious bodily injury or death	Chapter 2-Response to Resistance	Fact Specific		
Violations of duty weapons policy	803-Duty Weapons	Written Reprimand to 1-3 Days	Increased one level	Increased one level
Violations of pursuit policy	214-Vehicle Pursuit Policy, 400-Officer Response to Calls, 804-Department Vehicles	Written Reprimand to 1-3 Days	Increased one level	Increased one level
Pursuit policy, Aggravated	214-Vehicle Pursuit Policy, 400-Officer Response to Calls, 804-Department Vehicles	1-15 Days	4-15 Days	4-15 Days to IS
Operation of police vehicle (non-collision)	214-Vehicle Pursuit Policy, 400-Officer Response to Calls, 804-Department Vehicles	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
At Fault collision (not involving serious bodily injury or death)	214-Vehicle Pursuit Policy, 400-Officer Response to Calls, 804-Department Vehicles	Oral Reprimand to 1-3 Days	Increased one level	Increased one level

Austin Police Department
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Discipline Matrix

Discipline Matrix, Cont.

Violation	Policy Manual Reference	1st Occurrence	2nd Occurrence	3rd Occurrence
Negligent/Reckless conduct resulting in SBI or death	Inclusive, but not limited to: Chapter 2 - Response to Resistance and Pursuit Policies	Indefinite Suspension		
Violation of tactics, other than above "A".	Inclusive, but not limited to: Chapter 2 - Response to Resistance and Pursuit Policies	Fact Specific		

* If inappropriate electronic messages bring discredit to the Department, increase one level.

Appendix C: Policy/Procedure for Complaint Mediation Process in
Baltimore City, MD

POLICE TRAINING AND STANDARDS COMMISSION (PTSC)

**COMMUNITY MEMBER-POLICE COMPLAINT
MEDIATION PROGRAM (MODEL)**



Adopted by the Police Training and Standards Commission, April 19, 2017

I. TITLE: COMMUNITY MEMBER-POLICE COMPLAINT POLICE TRAINING AND STANDARDS COMMISSON (PTSC) MODEL MEDIATION PROGRAM

II. TABLE OF CONTENTS:

- III. Background
- IV. Purpose and Objectives
- V. Definitions
- VI. Legal References
- VII. Policy Statement
- VIII. Developing the Community member-Police Complaint Mediation Program
- IX. Community member-Police Complaint Mediation Program Administration
- X. Selection of Complaint for Mediation:
 - X – A. General
 - X – B. ELIGIBLE Complaints
 - X – C. Other ELIGIBILTY Factors to be Considered
 - X – E. Mediation of Use of Force/Racial/Ethnic/Cultural Complaints/Constitutional Violation Allegations
 - X – D. INELIGIBLE Complaints
- XI. Initial Notification of Complainant about Mediation Process
- XII. Notification of Parties - Option to Mediate:
 - XII – A. Officer
 - XII – B. Complainant
- XIII. Scheduling a Mediation Session
- XIV. Appearance at the Scheduled Mediation Session
- XV. Voluntary Participation in Mediation
- XVI. Confidentiality of Mediation Session
- XVII. The Mediation Process:
 - XVII – A. Inclusive Mediation
- XVIII. Selection of Mediator
 - XVIII – A. Qualifications
 - XVIII – B. Training
- XIX. Role of the Mediator
- XX. The Mediation Session
 - XX – A. Structure
- XXI. Impasse
- XXII. Attendance of Others at Mediation Session
- XXIII. Presence of Interpreters
- XXIV. Letter of Conclusion
- XXV. Wearing Agency Uniform of Day
- XXVI. Use of Video/Audio Recordings During Mediation Sessions
- XXVII. Session Length
- XXVIII. Complaint Closure
- XXIX. Training
- XXX. Mediation Evaluation
- XXX1. Policy Review and Revision

Appendix

III. BACKGROUND:

Mediation is one of several alternate dispute resolution techniques that are used to settle disagreements or conflicts. It is based on the voluntary participation of the disputing parties who agree to discuss their differences in the presence of a third party, an independent, trained mediator. Mediation calls for a “good faith” conversation between the disputing parties in a safe environment where they can meet and air their views about the events or issues that created the dispute. The mediation process is intended to develop mutual understanding between the conflicting parties with the goal of resolving the dispute.

The use of mediation to resolve complaints against sworn personnel differs from the AGENCY’S NAME standard, formal procedures which have traditionally been used to investigate and resolve complaints filed by members of the community. The traditional complaint resolution process focuses on fact finding, pinpointing responsibility, determining guilt or innocence, and punishing those found guilty of violating agency policies and procedures, rules and regulations or other directives. The AGENCY’S NAME traditional complaint review procedures, for example, focuses on determining whether or not a member of the agency has committed the alleged misconduct and whether that member should be punished for the violation. While there are still a number of instances in which its established complaint investigation/resolution process must be used, the AGENCY NAME believes there are also a number of cases in which mediation is a more practical and effective way to resolve differences between members of the community and law enforcement officers. In addition to effectively satisfying certain complaints generated by community members the AGENCY NAME believes that the use of mediation will broaden the perspectives of both the complainants and agency personnel as they share their views and feelings about the incident in which they were involved.

Mediation does not focus on punishment or determining who was “right-wrong.” Mediation is intended to be conciliatory, i.e. it emphasizes a resolution of the conflict that focuses on outcomes sought by the both parties. The AGENCY NAME believes this approach is especially useful when dealing with a number of complaints lodged by community members against its personnel especially those that are based on perceptions of rudeness and discourtesy, or a misunderstanding caused by miscommunication. In contrast to the traditional investigative complaint resolution procedure which focuses on guilt or innocence mediation focuses on understanding, problem solving, and reconciliation. The AGENCY NAME believes that by candidly discussing differences, the complainant and the officer can hopefully not only resolve their personal dispute but can open a wider door to a better understanding of each other’s views thereby lessening the potential for future disputes between the officer and community members.

The AGENCY NAME recognizes that mediation’s application to resolving community member complaints against its personnel is a new concept. While to date, it has been used sparingly by a limited number of law enforcement agencies nationwide over the past two decades to resolve these complaints, mediation is now being examined by a greater number of law enforcement agencies as a complaint resolution technique. To this end, the AGENCY NAME has examined mediation’s potential as a complaint resolution technique and a way to broaden both the perspectives of its personnel and the community members whom it serves. The AGENCY NAME has decided to offer mediation under certain circumstances to complainants and agency personnel who are willing to resolve their differences through face-to-face interaction in a safe environment.

During mediation, a trained, neutral/independent third party, referred to as a mediator, will facilitate the mediation process. The mediator will not try to influence/pressure/otherwise impose on either party an agreement or settlement in order to resolve the dispute in any particular way. The disputing parties will own the process, i.e. they will set the ground rules for how the mediation session will go and what results they hope to achieve during mediation. Hopefully, they will see mediation as their opportunity to resolve their differences in a way that is satisfactory to both of them. In essence, mediation gives both participants control over the final resolution of the complaint.

To this end, the AGENCY NAME has contacted the NAME OF INDEPENDENT MEDIATION ORGANIZATION and has requested that it provide the mediation services in this effort. Together with the NAME OF THE INDEPENDENT ORGANIZATION, various members of the agency, including members of the command staff, rank and file and labor organization, and members of the community, the AGENCY NAME has developed the Community Member-Police Complaint Mediation Program presented in this policy and procedure.

IV. PURPOSE AND OBJECTIVES:

The AGENCY NAME understands that not everyone who has a complaint against a police officer wants to see the officer punished. Some complainants simply want to understand why an officer took a particular action, or want an opportunity to explain their own actions to the officer. Other complainants want to retain some control over how their complaint gets handled rather than turning the complaint entirely over to the law enforcement agency or civilian review board for decisions and resolution. Some complainants truly understand that taking an adversarial approach is not constructive or ultimately helpful to anyone. When it comes to how to resolve complaints against law enforcement officers, one size does not fit all, and that is why the AGENCY NAME offers its Community Member-Police Complaint Mediation Program as an alternative to its traditional standard complaint resolution process.

The AGENCY NAME recognizes that the traditional standard investigation and adjudication process used to investigate complaints does not provide opportunities for complainants and officers to interact in a controlled setting in a way that is calculated to increase mutual understanding and bring closure to problem incidents. Experience has shown that the traditional investigative process frequently leaves both the complainants and the involved officers further alienated from each other and dissatisfied with the entire complaint resolution process.

The AGENCY NAME has as one of its primary goals in establishing its Community Member-Police Complaint Mediation Program to increase the level of trust and understanding between the community at large and members of the agency. Mediation empowers both community members and officers to exercise their voice in a safe and productive environment. Mediation gives all participants a chance to be heard and be understood and to be exposed to new viewpoints from the other participant. It also gives officers and community members an opportunity to consider new and more satisfactory ways of interacting with each other in the future.

The AGENCY NAME believes that mediation can bridge the communication gap and create greater understanding and appreciation between community members and officers. This, in turn, has the significant potential to improve community relations between agency members and the individuals they are sworn to protect and serve. The AGENCY NAME believes that informal resolution and mediation enhances community policing by improving the relationship between members of the community and law enforcement officers one complaint at a time. In addition, a successful complaint resolution can have a positive impact on the participants' family, friends and the community as a whole.

Because mediation is a confidential process, statements made by any of the parties may not be subsequently used in a formal legal proceeding including administrative hearings. Thus, each side can freely discuss the issue at hand.

This Policy and Procedure sets forth the AGENCY NAME *Community Member-Police Complaint Mediation Program*.

V. DEFINITIONS:

For purposes of this policy and procedure the following terms have the following meanings

COMPLAINT: an allegation made by a community member in which he/she believes that a sworn officer of this agency was engaged in misconduct or behavior that was perceived by the complainant as inappropriate under the circumstances; complaints made by community members may reflect behavior which, if true:

- a) violates one of the policies, procedures, rules/regulations or other directives of the agency, agency training standards, or, in some cases, violates the law, e.g. traffic violation; or
- b) expresses dissatisfaction with the level of service given by a member of the agency; or
- c) indicates dissatisfaction with an agency policy, procedure, agency philosophy, etc.

NOTE: a disagreement over the validity of any citation, e.g. a traffic/vehicle code citation, parking violation, criminal citation, etc., is not grounds for the initiation of a complaint; that is a matter for adjudication by the court of jurisdiction; however, a complaint can be filed about the conduct of the officer issuing the citation.

SAMPLE POLICY/PROCEDURE – FOR ILLUSTRATION PURPOSES (PTSC Adopted 4-19-17)

CONFIDENTIAL MATERIAL: refers to any communication occurring during a mediation session that could be/has the potential to be used in a judicial, administrative or other proceeding involving a party to the mediation, as set forth in CP § 3 – 1803.

IMPASSE: an outcome of a mediation session in which neither party is willing to compromise any further on an issue; an IMPASSE occurs when, after engaging in good faith discussion in the presence of a mediator, the parties agree that they are unable to resolve the complaint, dispute or disagreement that initiated the mediation session; for purposes of the AGENCY NAME complaint resolution program an IMPASSE does not indicate that mediation was unsuccessful;

INDEPENDENT MEDIATION ORGANIZATION [IMO]/LOCAL MEDIATION PROVIDER: an organization, separate and apart from the AGENCY NAME that will supply/refer affiliated mediators who will conduct mediation sessions between complainants and agency personnel according to this policy and procedure; the IMO will also perform the various administrative duties associated with conducting, training for and documenting mediation sessions as mutually agreed upon by the IMO and AGENCY NAME; the IMO will be an organization/entity recognized by the Mediation and Conflict Resolution Office [within the Administrative Office of the Court –Maryland];

EXAMPLE:

COMMUNITY MEDIATION MARYLAND: the umbrella organization contracted by the AGENCY NAME to act as the Independent Mediation Organization [IMO] as required by law [www.mdmediation.org];

LETTER OF AGREEMENT/CONSENT TO MEDIATE: documentation signed by both parties in mediation, [and any other person in attendance during a mediation session] witnessed by the mediator, which indicates that both parties are consenting to voluntarily participate in mediation; in addition the parties acknowledge that they understand and agree to abide by the confidentiality requirements as set forth in CP § 3 – 1803.

LETTER OF CONCLUSION: a document signed by the mediator of record that is forwarded to the AGENCY NAME via the IMO indicating that a mediation session was held as scheduled between the complainant and the officer; unless mutually agreed to by the parties involved in the mediation session no additional information will be furnished by the mediator to the AGENCY NAME or any other party;

MEDIATION: a process in which parties in a dispute work with one or more impartial mediators who assist the parties in reaching a voluntary agreement for the resolution of a dispute or issues that are part of a dispute [CP § 3-1801]; it is one of several recognized alternate dispute resolution techniques in which a trained impartial mediator(s) helps people in conflict to communicate with one another, understand each other, and if possible, reach agreements that satisfy the participants’ needs;

MEDIATION- ELIGIBLE COMPLAINT: a complaint alleging misconduct or inappropriate behavior, filed by a member of the community according to existing agency policies and procedures which the AGENCY NAME has determined is eligible to be considered for mediation as set forth in this policy and procedure; with the exception of the types of misconduct described in this policy and procedure as being mediation-ineligible, the AGENCY NAME will carefully review and evaluate the complaints and attendant circumstances that are filed against its personnel so as to determine their suitability for an offer of mediation;

MEDIATION-INELIGIBLE COMPLAINT: complaints about the actions and/or behavior of agency personnel that, if true, would have a significant, adverse effect on either a community member, the public at large and/or the ability of the AGENCY NAME to provide lawful, fair/equitable and professional law enforcement services to the community; in general, allegations involving criminal conduct, complaints of excessive/ inappropriate use of force or force considered to be greater than a de minimis level of force or one involving injury or medical treatment, clearly indicate discriminatory policing and/or Constitutional violations, any ethical violation or any violation of the policies/procedures, rules/regulations or directives of this agency that, if true, could result in a suspension from duty greater than allowed for “summary punishment” or could result in termination from the agency are NOT “mediation eligible” unless specifically deemed “mediation- eligible” by the head of the agency;

SAMPLE POLICY/PROCEDURE – FOR ILLUSTRATION PURPOSES (PTSC Adopted 4-19-17)

MEDIATION SESSION: the discussion between a complainant and officer which takes place in the presence of a mediator in a private, neutral setting;

MEDIATOR: is a trained, impartial third party, affiliated with an independent mediation organization, who will facilitate the conduct of a mediation session; a mediator does not provide legal advice or recommend or impose the terms of any agreements; a mediator helps the individuals involved in the mediation session to reach their own agreements, rebuild their relationship, and if possible, find lasting solutions to their disputes;

MISCONDUCT: is any act or omission by an employee which if proven true would normally result in some form of discipline, sanction or remediation. This would include:

1. commission of a criminal act;
2. neglect of duty;
3. violation of an agency policy, procedure, rule or regulation, or other agency directive or agency training standard;
4. conduct which may tend to reflect unfavorably on the individual as a law enforcement officer or the agency.

“NON-VIOLENT” COMPLAINT: a complaint filed against a member of the agency that Involves a DE MINIMIS use of force that does not result in an injury or medical treatment is considered “NON- VIOLENT” for purposes of this policy;

DE MINIMIS uses of force normally are:

1. “hands-on” techniques that are intended to guide/direct/restrain/ maintain control/custody of an individual, including handcuffing or other means of restraint; or
2. the mere display of a weapon;

For purposes of this policy and procedure, a NON-VIOLENT complaint is one in which there is NO indication/allegation that the member used an impact weapon, electronic control device, K-9, “hard control” technique, or chemical agent or pepper spray;

DE MINIMIS USE OF FORCE: refers to uses of force that are applied in “good faith” to maintain control of or restore discipline” of an individual and are not “maliciously and sadistically [used] to cause harm;” de minimis amounts of force are “objectively reasonable in light of the facts and circumstances confronting [the officer], without regard to [the officer’s] underlying intent or motivation.” [Graham v. Connor, 490 U.S. 386 (1989)]

VI. LEGAL REFERENCES:

Public Safety Article § 3 – 207 (D) (1-3):

(D) The Commission SHALL:

- (1) establish a POLICE COMPLAINT MEDIATION PROGRAM to which a law enforcement agency MAY REFER, subject to the agreement of the complainant, a NONVIOLENT COMPLAINT made against a police officer out of the standard complaint process;
- (2) REFER a complaint referred to the program to VOLUNTARY MEDIATION conducted by an INDEPENDENT MEDIATION SERVICE; and
- (3) ADOPT REGULATIONS TO IMPLEMENT THE PROGRAM, including criteria concerning eligibility for referral of complaints.

Courts and Judicial Proceedings Article § 3-1803 et al.:

§ 3-1803. Duties of mediator and participants:

- (a) Mediator and participants requested by mediator. -- Except as provided in § 3-1804 of this subtitle, a mediator or any person present or otherwise participating in a mediation at the request of a mediator:
 - (1) Shall maintain the confidentiality of all mediation communications; and
 - (2) May not disclose or be compelled to disclose mediation communications in any judicial, administrative or other proceeding.

- (b) Parties or participants requested by parties. -- Except as provided in § 3-1804 of this subtitle:
 - (1) A party to a mediation and any person present or otherwise participating in the mediation at the request of a party may not disclose or be compelled to disclose mediation communications in any judicial, administrative, or other proceeding; and
 - (2) The parties may enter into a written agreement to maintain the confidentiality of all mediation communications and may require any person present or otherwise participating in the mediation at the request of a party to maintain the confidentiality of all mediation communications.

§ 3-1804. Requirements and exceptions

- (a) Written agreement of confidentiality required. -- A document signed by the parties that records points of agreement expressed by the parties or that constitutes an agreement reached by the parties as a result of mediation is not confidential unless the parties agree otherwise in writing.
- (b) Disclosures allowed. -- In addition to any other disclosure required by law, a mediator, a party, or a person who was present or who otherwise participated in a mediation at the request of the mediator or a party may disclose mediation communications:
 - (1) To a potential victim or to the appropriate law enforcement authority to the extent that the mediator, party, or person reasonably believes the disclosure is necessary to prevent bodily harm or death to the potential victim;
 - (2) To the extent necessary to assert or defend against allegations of mediator misconduct or negligence;
 - (3) To the extent necessary to assert or defend against allegations of professional misconduct or malpractice by a party or any person who was present or who otherwise participated in the mediation at the request of a party, except that a mediator may not be compelled to participate in a proceeding arising out of the disclosure; or
 - (4) To the extent necessary to assert or defend against a claim or defense that, because of fraud, duress, or misrepresentation, a contract arising out of a mediation should be rescinded or damages should be awarded.
- (c) Disclosure by court order; limitations. -- A court may order mediation communications to be disclosed only to the extent that the court determines that the disclosure is necessary to prevent an injustice or harm to the public interest that is of sufficient magnitude in the particular case to outweigh the integrity of mediation proceedings.

§ 3-1805. When communications subject to discovery:

Mediation communications that are confidential under this subtitle are not subject to discovery, but information that is otherwise admissible or subject to discovery does not become inadmissible or protected from disclosure solely by reason of its use in mediation.

Maryland Rule § 17-205 - Qualifications of Court-Designated Mediators:

1. at least 21 years old, unless waived by both parties;
2. have completed at least 40 hours of basic mediation training in a program meeting the requirements of Rule 17-104 (outlined below), or for individuals trained prior to January 1, 2013, former rule 17-106;
3. be familiar with the rules, statutes and practices governing mediation in circuit courts;
4. have mediated or co-mediated at least two civil cases;
5. complete in each calendar year four (4) hours of continuing mediation-related education in one or more of the topics set forth in Rule 17-104;
6. abide by the mediation standards adopted by the Court of Appeals;
7. submit to periodic monitoring of court-ordered mediations by a qualified mediator designated by the county administrative judge; and

8. comply with procedures and requirements prescribed in the court’s case management plan filed under Rule 16-202 b relating to diligence, quality assurance and a willingness to accept, upon the request of the court, a reasonable number of referrals at a reduced fee or pro bono.

Maryland Rule 17-104, Basic Mediation Training Programs:

To qualify under Rule 17-205 (above) or 17-304, a basic mediation training program shall include the following:

- a. conflict resolution and mediation theory, including causes of conflict, interest-based versus positional bargaining and models of conflict resolution;
- b. mediation skills and techniques, including information gathering skills; communication skills; problem-solving skills; interaction skills; conflict management skills; negotiation techniques; caucusing; cultural, ethnic and gender issues; and strategies to:
 - 1) identify and respond to power imbalances, intimidation, and the presence and effects of domestic violence, and
 - 2) safely terminate a mediation when such action is warranted;
- c. mediator conduct, including conflicts of interest, confidentiality, neutrality, ethics and standards of practice; and
- d. simulations and role-playing monitored and critiqued by experienced mediator trainers.

Public Safety Article §3–110:

- (a) On written request, a law enforcement officer may have expunged from any file the record of a formal complaint made against the law enforcement officer if:
 - (1) (i) the law enforcement agency that investigated the complaint:
 1. exonerated the law enforcement officer of all charges in the complaint; or
 2. determined that the charges were un-sustained or unfounded; or
 - (ii) a hearing board acquitted the law enforcement officer, dismissed the action, or made a finding of not guilty; and
 - (2) at least 3 years have passed since the final disposition by the law enforcement agency or hearing board.
- (b) Evidence of a formal complaint against a law enforcement officer is not admissible in an administrative or judicial proceeding if the complaint resulted in an outcome listed in subsection (a) (1) of this section.

VII. POLICY STATEMENT:

It is the policy of the AGENCY NAME to offer the option to voluntarily participate in mediation both to a community member who has filed a complaint involving certain types of conduct against a member of the agency and to the member about whose behavior the complaint has been filed. The mediation session will be conducted by a trained, neutral mediator affiliated with a recognized Independent Mediation Organization [IMO], at a neutral location at a time convenient to both parties.

The AGENCY NAME will identify certain behaviors/conduct in this policy and procedure as being normally “mediation eligible.”

The AGENCY NAME will, whenever possible at the time of the initial complaint, explain the mediation process to the complainant and provide the complainant with a copy of its *CITIZEN COMPLAINT RESOLUTION BROCHURE* which contains a summary of the voluntary complaint mediation program as well as an explanation of the traditional investigative complaint process used by the AGENCY NAME.

The AGENCY NAME will also publish and maintain a copy of this policy and procedure as well as its brochure on its website.

The AGENCY NAME will treat all mediation sessions as confidential as defined in CP § 1804 of the Code of Maryland. As such, the AGENCY NAME will require the mediators affiliated with the Independent Mediation Organization to obtain a signed Agreement/Consent to Mediate Letter from each of the involved parties and any other attendees at the session. The Agreement /Consent to Mediate Letter will be witnessed by the mediator, prior to the mediation session taking place.

SAMPLE POLICY/PROCEDURE – FOR ILLUSTRATION PURPOSES (PTSC Adopted 4-19-17)

It is the policy of the AGENCY NAME to consider that once a scheduled mediation session has begun that the complaint will be considered as “mediated,” and, therefore, categorized as “closed by mediation.” Mediated complaints will have the same status as complaints that are classified as UNSUSTAINED and shall be maintained in file as allowed by PS § 3 -110 (a).

It is the policy of the AGENCY NAME not to consider an officer’s acceptance of or declination of mediation in any subsequent disciplinary matters. However, the AGENCY NAME will limit the number of times any officer can participate in mediation during a [TIMEFRAME TBD BY AGENCY] to no more than [# TBD BY AGENCY].

VIII. DEVELOPING THE CITIZEN-POLICE COMPLAINT MEDIATION PROGRAM:

The AGENCY NAME Community Member-Police Complaint Mediation Program has been developed with the input from a number of key agency personnel including members of the command staff, supervisory staff, rank and file officers as well as representatives from the labor organization. Likewise, representatives from the community and of NAME OF INDEPENDENT MEDIATION ORGANIZATION have also been involved in discussing critical issues regarding mediation and developing this program.

The AGENCY NAME Community Member-Police Complaint Mediation Program conforms to the standards and regulations established and provided by the Maryland Police Training and Standards Commission and the recommendations of the NAME OF INDEPENDENT MEDIATION ORGANIZATION.

IX. COMPLAINT MEDIATION PROGRAM ADMINISTRATION:

The AGENCY UNIT NAME commander is designated as the administrator for the agency’s Community Member-Police Complaint Mediation Program and has the authority and responsibility to:

- ▶ provide administrative oversight for the agency’s Community Member Police Complaint Mediation Program as required:
 - develop and implement any internal procedures for record keeping and other administrative duties, etc., as relates to the mediation of complaints;
- ▶ act as agency liaison with the NAME OF INDEPENDENT MEDIATION ORGANIZATION regarding Community Member-Police Complaint Mediation Program;
- ▶ develop and conduct complaint mediation training for agency personnel as required;
- ▶ review and evaluate community member complaints and select those that are mediation-eligible as described in this policy and procedure:
 - consult with the agency head or his/her designee regarding questions about a complaint’s mediation eligibility when necessary;
- ▶ contact the officer involved in the mediation-eligible complaint to determine if he/she wishes to mediate the complaint;
- ▶ ensure that mediation –eligible complaints and complainant contact information are forwarded to the NAME OF THE INDEPENDENT MEDIATION ORGANIZATION as soon as practical after an officer has agreed to mediation so the NAME OF THE INDEPENDENT MEDIATION ORGANIZATION can contact the complainant with an offer to mediate his/her complaint;
- ▶ maintain Closure Letters of all mediation sessions conducted by mediators affiliated with NAME OF THE INDEPENDENT MEDIATION ORGANIZATION;
- ▶ with the assistance of the NAME OF THE INDEPENDENT MEDIATION ORGANIZATION compile an annual report of /about the use of and citizen-agency personnel satisfaction with the agency’s complaint mediation program for the agency head;
- ▶ periodically review and update as necessary this policy and procedure;
- ▶ post a current copy of this policy and procedure as well as the AGENCY NAME Complaint Resolution Brochure on its website;

X. SELECTION OF COMPLAINT FOR MEDIATION:

X – A. GENERAL:

Upon consulting with the NAME OF INDEPENDENT MEDIATION ORGANIZATION, the AGENCY NAME does not believe that categorically excluding a complaint from consideration for mediation is in the best interests of the community, in particular if the allegation appears, on its face, to be a matter of misunderstanding or miscommunication between the officer and the community member.

Therefore, the Mediation Program Administrator will carefully review and evaluate each complaint and the circumstances reported in that complaint prior to determining if mediation should/should not be offered to the parties involved in the incident.

In addition, prior to making a decision as to whether a particular complaint is eligible/not eligible for mediation, the Mediation Program Administrator shall also weigh the potential benefits of an offer of mediation as they apply to the complainant, the community at large and the agency against the potential exposure to harm, i.e. potential civil liability and potential damage to the ability of the agency to protect the community.

To provide guidance to all agency personnel, the AGENCY NAME has determined that, in general, depending on the particular circumstances surrounding the complaint, mediation may be offered to resolve a complaint that appears to be based on:

- a. a lack of communication or miscommunication between a community member and officer involved in an incident;
- b. a misunderstanding about an officer's authority to act;
- c. a misunderstanding about an officer's application of an agency standard operation procedure or other professionally accepted practice;

When deciding whether to consider any complaint for mediation as an alternative to a traditional investigation, the Mediation Program Administrator will consider, at a minimum, the following:

- 1) the type and severity of the alleged violation and the particular circumstances involved in the complaint;
- 2) the work history and disciplinary record of the officer involved including previous mediation history;
- 3) whether mediation will potentially:
 - a) result in greater complainant satisfaction;
 - b) improve citizen understanding of police procedures and actions;
 - c) result in improved officer conduct; and
 - d) contribute to improved citizen-police relations.

While the AGENCY NAME recognizes that there are several potential benefits for the community member, officer, agency and community at large that can accrue through a successful mediation, the AGENCY NAME understands that there is no right to mediation, either expressed or implied in this policy, for any party involved in a complaint. The AGENCY NAME reserves the right to decline to offer mediation for any complaint filed by a community member.

Additionally, circumstances may prompt the AGENCY NAME to withdraw/rescind the mediation option from either the community member or the officer before a mediation session takes place.

X – B. MEDIATION ELIGIBLE COMPLAINTS:

As part of its established complaint resolution process, the AGENCY NAME has determined that community member complaints that fall within the following categories are normally “ELIGIBLE” to be considered for mediation. As described above, the circumstances outlined in the initial complaint will be reviewed by the Mediation Program Administrator and the several objective eligibility factors listed in this policy and procedure will be factored into the decision as to whether to offer mediation.

1. Conduct that has a MINIMAL negative impact on the operations or professional image of the agency:

Examples:

- ▶ Plainclothes Officer – Failure to Identify Self as Officer;
- ▶ Failure to Provide Name and Badge Number on request;
- ▶ Traffic Violation by Officer/Emergency Vehicle Operation complaint;
- ▶ Discourtesy/Rudeness;

2. Conduct that has MORE THAN A MINIMAL negative impact on the operations or professional image of the agency or that negatively impacts relationships with other officers, agencies or the public:

Examples:

- ▶ Responsibilities to Serve Public;
- ▶ Displaying an Impartial Attitude;
- ▶ Discourtesy – Language or Behavior;
- ▶ Department Vehicle Operation;
- ▶ Failure to Make, File or Complete Official Report;

3. Conduct that has a PRONOUNCED NEGATIVE impact on the operations or professional image of the agency, or on relationships with other officers, agencies or the public;

Examples:

- ▶ Display of Firearms;
- ▶ Verbal Assault and Abuse of the Public;
- ▶ Unwarranted Action [no arrest];
- ▶ Careless handling of firearm [no discharge];
- ▶ Harassment/Racial/Ethnic/Cultural Disparagement;
- ▶ Mistreatment of Prisoners or Suspects [no injury];
- ▶ Soliciting, Accepting Gifts or Gratuities; X – C. OTHER ELIGIBILITY FACTORS TO BE

CONSIDERED:

The AGENCY NAME recognizes that all complaints that appear, at first glance, to be potentially eligible for mediation by type of behavior may not be, in reality, good candidates for mediation. In addition to the severity of or the minimal nature of the consequences caused by the behavior alleged in the complaint, the agency will also use the following additional objective factors to determine if a complaint should be offered to the officer and complainant for mediation. Those objective factors include an officer’s:

- ▶ COMPLIMENTARY history:
 - awards/commendations/positive public recognition or acknowledgment;
- ▶ prior WORK HISTORY:
 - positive performance evaluations and/or voluntary, advanced, job-related training; or
 - recommendation of supervisor(s)/command officers within chain of command;
- ▶ DISCIPLINARY history:

- minimal or lack of prior disciplinary history relative to the officer’s years of service:
 - nature and seriousness of any prior sustained violation(s);
 - number of prior sustained violation(s);
 - length of time between prior sustained violation(s) and current case;
 - [number of prior complaints TBD by agency] of any type in past 12 months;
 - prior complaint mediation experience:
 - ◆ participation in [# TBD by agency] mediation sessions during past [timeframe TBD by agency];
 - ◆ participation in a mediation session for the same type of complaint in past [timeframe TBD by agency];
 - relationship between any prior violation(s) and the present alleged misconduct;
 - whether the officer’s prior history demonstrates a continuation or pattern of the same or similar misconduct; and
 - whether the prior history demonstrates continuous misconduct evidencing a failure to conform to rules or to correct inappropriate behavior.

Whenever a question arises as to the mediation–eligibility of a complaint, the Mediation Program Administrator will consult with higher command within his/her chain of command before making a determination as whether or not to offer mediation.

X – D. MEDIATION OF DE MINIMIS USE OF FORCE COMPLAINTS [NON-INJURY/NO MEDICAL TREATMENT]
COMPLAINTS/RACIAL/ETHNIC/CULTURAL DISPARAGEMENT COMPLAINTS [NO CONSTITUTIONAL RIGHTS VIOLATION]:

Overview:

The AGENCY NAME recognizes the potential seriousness and consequences when a complainant alleges that they believe that personnel used unnecessary force, inappropriately applied force or exhibited racial/ethnic or cultural insensitivity/bias during an encounter with a community member.

However, the AGENCY NAME also understands that a number of complaints alleging such behavior may be caused by a misunderstanding/miscommunication between a community member and officer. It also recognizes that such complaints are often difficult to sustain when subjected to a traditional standard investigation when only the word of the participants is available. The AGENCY NAME believes that categorically excluding these complaints from the mediation process means losing a potentially valuable opportunity for community members and agency members to better understand each other’s perspective, to explore how they might prevent similar problems in the future, and to reach a satisfying resolution to the complaint.

Therefore, it is because of the potential benefits to the community and agency personnel that may accrue when such sensitive incidents can be discussed in the presence of a neutral, independent third party that the AGENCY NAME, with the concurrence of the NAME OF THE INDEPENDENT MEDIATION ORGANIZATION, allows the Mediation Program Administrator to consider extending an offer of mediation to the individuals involved in the above types of complaints under the following circumstances:

X – D – 1: MEDIATION OF COMPLAINTS INVOLVING DE MINIMIS FORCE:

Community member complaints that involve the attempted/threatened/actual use of DE MINIMIS “hands on” force that did NOT result in bodily injury requiring medical treatment and/or did NOT involve the use of an impact weapon, electronic control device, K-9, “hard” control techniques, or chemical agents/pepper spray are considered to be NON-VIOLENT for purposes of this policy and procedure and MAY be appropriate for mediation depending upon the circumstances surrounding the complaint.

SAMPLE POLICY/PROCEDURE – FOR ILLUSTRATION PURPOSES (PTSC Adopted 4-19-17)

Prior to offering an offer of mediation to the officer the Mediation Program Administrator shall:

- a. review the complaint and any available attendant agency reports about the incident to determine the potential severity of the complaint and its mediation-eligibility otherwise;
- b. determine if any force used during the incident was *de minimis* such as “hands-on” force only, i.e. handcuffing/holding/restraining /weapon display/threat of force, etc.:
 - no weapon/no chemical agent/electronic device, etc. was used on the complainant;
- c. determine that no injury requiring medical treatment occurred to the complainant as a result of the officer’s action;
- d. if the complaint resulted in an arrest or issuance of a citation, the matter has been adjudicated.

X – D – 2: MEDIATION OF COMPLAINTS INVOLVING RACIAL/ETHNIC/CULTURAL DISPARAGEMENT:

In addition to complaints that involve a *DE MINIMIS* amount of force, the [AGENCY NAME](#) has also decided not to categorically exclude any citizen complaint alleging racial/ethnic/cultural insensitivity on the part of its personnel from the possibility of mediation.

The agency believes that such cases are an opportunity for citizens and officers to share their perspectives on these sensitive topics. Because allegations of harassment or other racial/ethnic/cultural disparagement may be a matter of perception rather than substance [name calling, derogatory language, etc.] such complaints MAY be appropriate for mediation pending the consent of the complainant.

On receiving a complaint that claims racial/ethnic/cultural disparagement the Mediation Program Administrator will:

- a. review the complaint and any available attendant agency reports about the incident to determine the potential severity of the complaint and its mediation-eligibility otherwise;
- b. determine whether there is/is not indication of discriminatory policing/Constitutional violation:
 - i. if necessary, speak with the complainant as part of his/her review;
- c. determine if the complainant was/was not arrested:
 - i. if arrested, the complaint is ineligible for mediation until the case is adjudicated in court;
- d. determine the mediation eligibility of the complaint as otherwise required by this policy/procedure;
- e. after determining the complaint’s eligibility for mediation, the Mediation Program Administrator will forward a recommendation to the head of the agency or his/her designee, via channels, for approval before extending an offer of mediation to the officer and complainant.

If approval for mediation is granted, the Mediation Program Administrator shall extend offers of mediation as outlined in this policy. If either the officer or the complainant declines to mediate the complaint then the complaint will be subject to the agency’s investigative process.

If the Mediation Program Administrator determines, after a review and evaluation of a community member complaint that may also include a conversation with the complainant, that a member of the agency was engaged in an act/behavior that is one of discriminatory policing or involves a Constitutional violation, then that complaint will be investigated by the [AGENCY NAME](#) in accordance with established standard procedures.

X – E. **INELIGIBLE COMPLAINTS:**

While the AGENCY NAME has concluded that there is significant benefit in mediating certain complaints against its personnel, it also realizes that complaints alleging certain types of misconduct normally require a thorough administrative investigation in order to resolve a complaint from a community member. Such administrative investigations are intended to protect the interests of the public as well as the agency. Administrative investigations occur when complaints involve actions or behavior that, if true, would have a significant adverse effect on either a community member, the public at large and/or the ability of the AGENCY NAME to provide lawful, fair/equitable and professional law enforcement services to the community.

Complaints/allegations that indicate one of the following actions/behaviors will normally be subject to a standard administrative investigation by the agency:

1. criminal conduct [traffic violations excluded];
2. a use of more than a “*de minimis*” amount of force as described in this policy and procedure;
3. an inappropriate use of force or a misapplication of an agency sanctioned use of force technique;
4. a use of force that results in an injury/medical treatment to a complaint;
5. a violation of an agency policy-procedure/rule-regulation/other directive or a professional ethical standard that, if sustained, could result in a suspension greater than allowed for “summary punishment” or could result in termination from the agency;
6. conduct/behavior/action that clearly indicates a violation of a Constitutional right; or
7. conduct/behavior/action that clearly indicates discriminatory policing.

Examples:

- ▶ Sexual misconduct;
- ▶ Drinking while on duty or in uniform;
- ▶ Performing Law Enforcement Duties under the Influence;
- ▶ Conduct prohibited by law [traffic offenses excluded];
- ▶ Clearly discriminatory policing/Constitutional violation;
- ▶ Aiding and Protecting Fellow Officers from Misconduct – Intentional;
- ▶ Inappropriate Use of Force;
- ▶ Ethical violations/officer corruption;

NOTE:

Whenever a question arises as to the mediation–eligibility/ineligibility of a complaint, the Mediation Program Administrator will consult with higher command within his/her chain of command before making a determination as whether or not the complaint is mediation eligible. If a clear determination cannot be made at this point, then the complaint will be forwarded to the agency head or his/her designee for a final decision as to whether to offer mediation or not to the complainant and officer involved.

Any complaint resulting from an arrest or the issuance of a traffic or criminal citation that is subject to adjudication by a court may only be mediated POST trial or POST payment of the citation.

XI. INITIAL NOTIFICATION OF COMPLAINANT ABOUT MEDIATION PROCESS:

Many complainants may be unaware that the AGENCY NAME participates in a mediation program to resolve some community member-police complaints. They may think that all complaints against officers are routinely investigated by other officers in the agency. Likewise, even complainants who do know that a mediation option exists may be unfamiliar with how the mediation process works and what it means for them.

SAMPLE POLICY/PROCEDURE – FOR ILLUSTRATION PURPOSES (PTSC Adopted 4-19-17)

It is, therefore, critical that agency personnel who are first notified of, and are required to document, a community member’s complaint under existing agency policy be responsible for notifying the complainant that he/she may be offered the opportunity to resolve his/her complaint through mediation after the complaint is reviewed by the department and determined to be eligible for mediation.

Agency personnel who first receive/document a citizen complaint shall:

- a. record and forward the complaint and complainant contact information including mailing address as per existing agency policy;
- b. if the complainant is physically present when the complaint is being recorded:
 - ▶ provide the complainant with a copy of the AGENCY NAME COMMUNITY MEMBER COMPLAINT RESOLUTION BROCHURE:
 - ▶ briefly explain that community member complaints are resolved in one of two ways:
 - through a traditional investigation; or
 - through voluntary community member – officer mediation by a neutral, independent, trained mediator;
 - ▶ briefly explain the agency’s voluntary mediation process including the fact that a representative from the agency will be contacting them within # of business days **[TBD by agency]** to discuss their options for resolving their complaint;
- c. if the complaint is being made by telephone or other electronic device:
 - ▶ refer the complainant to the agency’s website to view a copy of the above brochure;
 - ▶ briefly explain that community member complaints are resolved in one of two ways:
 - through traditional investigation; or
 - through voluntary community member – officer mediation by a neutral, independent, trained mediator;
 - ▶ briefly explain the agency’s voluntary mediation process including the fact that a representative from the agency will be contacting them within # of business days **[TBD by agency]** to discuss their options for resolving their complaint.

In cases where telephonic or electronic complaints are reported to the agency the Mediation Program Administrator will ensure that an agency brochure is mailed to the complainant of record as soon as possible after the complaint is received.

XII. NOTIFICATION OF PARTIES – OPTION TO MEDIATE:

Once a complaint has been initially reviewed to determine its mediation eligibility as described in this policy, the parties involved in the complaint will be notified of the option to mediate in the order and manner described below:

XII – A. OFFICER:

The officer against whom the complaint has been lodged will be contacted by the Mediation Program Administrator [electronically or in writing] to determine if he/she chooses to voluntarily participate in mediation with the complainant. The officer will have # of days **[TBD by agency]** to make a decision and to notify the Mediation Program Administrator

If the officer voluntarily agrees to mediation of the complaint, the **NAME OF INDEPENDENT MEDIATION ORGANIZATION** will be notified by the Mediation Program Administrator and be requested to contact the complainant to determine if he/she will voluntarily participate in mediation.

If the officer declines to participate in mediation, the complaint will be investigated and resolved according to existing agency policy and procedure.

SAMPLE POLICY/PROCEDURE – FOR ILLUSTRATION PURPOSES (PTSC Adopted 4-19-17)

After the complainant has been contacted by the NAME OF THE INDEPENDENT MEDIATION ORGANIZATION the officer will be contacted by the Mediation Program Administrator as to whether the complainant has agreed to mediation or not. He/she will be instructed to contact the NAME OF THE INDEPENDENT MEDIATION ORGANIZATION directly to establish a mutually convenient time for the mediation session. Failure of the officer to contact the mediation provider within # of days [TBD by IMO] of notification to mediate will be viewed as a withdrawal from the mediation process and the complaint will be investigated and resolved as per existing policy and procedure.

The AGENCY NAME will not consider an officer's decision to mediate or not mediate a complaint during any later disciplinary proceedings.

A complaint will be considered closed upon the completion of a mediation session administered by the NAME OF INDEPENDENT MEDIATION ORGANIZATION. The complaint will be labeled as "CLOSED - MEDIATED" in the files and will be classified by the agency as "Un-sustained."

XII – B. COMPLAINANT:

If the officer voluntarily agrees to mediation of the complaint, the Mediation Program Administrator will forward the complainant's contact information to the NAME OF THE INDEPENDENT MEDIATION ORGANIZATION which will contact the complainant to determine if the complainant will voluntarily participate in the mediation process. The NAME OF THE INDEPENDENT MEDIATION ORGANIZATION has agreed to attempt to contact the complainant immediately upon notification and will do so for a period of # of days [TBD by IMO]. If the NAME OF THE INDEPENDENT MEDIATION ORGANIZATION is unable to contact the complainant the Mediation Program Administrator will be notified and will attempt to contact the complainant on behalf of the NAME OF THE INDEPENDENT MEDIATION ORGANIZATION.

If the complainant agrees to mediation, the NAME OF THE INDEPENDENT MEDIATION ORGANIZATION will contact the Mediation Program Administrator to inform the officer and to instruct the officer to contact the NAME OF THE INDEPENDENT MEDIATION ORGANIZATION directly to establish a time for the mediation session.

If the complainant declines to mediate the complaint, the NAME OF THE INDEPENDENT MEDIATION ORGANIZATION will notify the complainant that his/her complaint will be investigated and resolved by the agency. The NAME OF THE INDEPENDENT MEDIATION ORGANIZATION will then contact the Mediation Program Administrator with the complainant's refusal to mediate.

XIII. SCHEDULING A MEDIATION SESSION:

If both parties voluntarily agree to participate in mediation, the NAME OF THE INDEPENDENT MEDIATION ORGANIZATION will schedule a mediation session at a mutually convenient time for both participants, at a neutral location. If deemed necessary by the NAME OF THE INDEPENDENT MEDIATION ORGANIZATION, each party in mediation will be provided a written notification of the date and time of the mediation session. The Mediation Program Administrator will also be provided with the date and time of the mediation session.

Personnel who attend a scheduled mediation session while off-duty will be entitled to be compensated as per established agency overtime procedures.

XIV. APPEARANCE AT THE MEDIATION SESSION:

Once the NAME OF THE INDEPENDENT MEDIATION ORGANIZATION has scheduled a mediation session and contacted the officer, the officer is required to appear at the mediation session as scheduled. The NAME OF INDEPENDENT MEDIATION ORGANIZATION will contact the Mediation Program Administrator as soon as practical if an officer fails to appear at a scheduled mediation session.

SAMPLE POLICY/PROCEDURE – FOR ILLUSTRATION PURPOSES (PTSC Adopted 4-19-17)

An officer's failure to appear for a scheduled mediation session without a justifiable reason and/or without contacting the NAME OF INDEPENDENT MEDIATION ORGANIZATION prior to the session, will nullify the agreement to mediate and result in the complaint being investigated and resolved as per existing agency policy and procedure.

Additionally, failure to appear at a scheduled mediation session without a justifiable reason and/or without contacting the mediation provider may lead to the exclusion from the mediation program for a period of time as determined by the head of the agency.

If the complainant fails to appear for a scheduled mediation session without a justifiable reason and/or without contacting the NAME OF THE INDEPENDENT MEDIATION ORGANIZATION, the officer will have the option of rescheduling the mediation session or requesting that the agency dismiss the complaint.

XV. VOLUNTARY PARTICIPATION IN MEDIATION:

While the decision to allow mediation is made after careful consideration of the circumstances and characteristics of each case, the AGENCY NAME makes the option of mediation available in order to allow the involved parties to decide for themselves whether mediation is an appropriate or desirable way to resolve their concerns and/or differences.

Participation in the agency's Community Member-Police Mediation Program by the complainant and the officer is VOLUNTARY.

Each party to the mediation will be required to agree to and sign a "Consent to Mediate Agreement Letter" provided by the NAME OF INDEPENDENT MEDIATION ORGANIZATION prior to the commencement of the mediation session [See Appendix A].

There is no right to mediation. Even if a complaint is eligible for mediation, any stakeholder/party to the process [the complainant, the officer and/or the agency] may decline to agree that a complaint should be resolved through the mediation process.

No stakeholder/party to the process shall be required to state the reason for declining to participate in mediation or for agreeing to assign a case for mediation.

If a complainant or officer declines to mediate the complaint or withdraws from the mediation process prior to the beginning of the mediation session the complaint will be investigated according to this agency's established complaint investigation policy and procedure.

XVI. CONFIDENTIALITY OF MEDIATION SESSION:

The AGENCY NAME recognizes that CONFIDENTIALITY is an essential element of mediation both for the complainant and for the officer involved. For mediation to succeed, both parties must feel free to speak candidly/openly. The AGENCY NAME understands that the confidentiality of the proceedings has special relevance for its personnel because they must be assured that any apology or acknowledgment of wrongdoing will not be used against them, either by this agency or by a private attorney in a legal proceeding including a criminal, civil or administrative hearing.

Therefore, the AGENCY NAME, along with the NAME OF INDEPENDENT MEDIATION ORGANIZATION, will adhere to confidentiality requirements set forth in the Courts and Judicial Proceedings Article § 3-1803, et al.:

§ 3-1803. Duties of mediator and participants:

- (a) Mediator and participants requested by mediator. -- Except as provided in § 3-1804 of this subtitle, a mediator or any person present or otherwise participating in a mediation at the request of a mediator:
 - (1) Shall maintain the confidentiality of all mediation communications; and
 - (2) May not disclose or be compelled to disclose mediation communications in any judicial, administrative, or other proceeding.

- (b) Parties or participants requested by parties. -- Except as provided in § 3-1804 of this subtitle:
- (1) A party to a mediation and any person present or otherwise participating in the mediation at the request of a party may not disclose or be compelled to disclose mediation communications in any judicial, administrative, or other proceeding; and
 - (2) The parties may enter into a written agreement to maintain the confidentiality of all mediation communications and may require any person present or otherwise participating in the mediation at the request of a party to maintain the confidentiality of all mediation communications.

§ 3-1804. Requirements and exceptions.

- (a) Written agreement of confidentiality required. -- A document signed by the parties that records points of agreement expressed by the parties or that constitutes an agreement reached by the parties as a result of mediation is not confidential unless the parties agree otherwise in writing.
- (b) Disclosures allowed. -- In addition to any other disclosure required by law, a mediator, a party, or a person who was present or who otherwise participated in a mediation at the request of the mediator or a party may disclose mediation communications:
- (1) To a potential victim or to the appropriate law enforcement authority to the extent that the mediator, party, or person reasonably believes the disclosure is necessary to prevent bodily harm or death to the potential victim;
 - (2) To the extent necessary to assert or defend against allegations of mediator misconduct or negligence;
 - (3) To the extent necessary to assert or defend against allegations of professional misconduct or malpractice by a party or any person who was present or who otherwise participated in the mediation at the request of a party, except that a mediator may not be compelled to participate in a proceeding arising out of the disclosure; or
 - (4) To the extent necessary to assert or defend against a claim or defense that, because of fraud, duress, or misrepresentation, a contract arising out of a mediation should be rescinded or damages should be awarded.
- (c) Disclosure by court order; limitations. -- A court may order mediation communications to be disclosed only to the extent that the court determines that the disclosure is necessary to prevent an injustice or harm to the public interest that is of sufficient magnitude in the particular case to outweigh the integrity of mediation proceedings.

§ 3-1805. When communications subject to discovery:

Mediation communications that are confidential under this subtitle are not subject to discovery, but information that is otherwise admissible or subject to discovery does not become inadmissible or protected from disclosure solely by reason of its use in mediation.

Mediation CONFIDENTIALITY includes ALL mediation communications, which include speech, writing, or conduct made as part of a mediation session.

The parties to a mediation session may mutually agree to document in writing an agreement signed by the parties as a result of mediation. This document is not confidential unless the parties agree in writing otherwise.

In order to protect the integrity of the mediation process, a mediator should not communicate information about the parties, their behavior, the merits of their case or any settlement to the NAME OF AGENCY or NAME OF INDEPENDENT MEDIATION ORGANIZATION or other party outside the mediation session. A mediator may report to the AGENCY NAME and NAME OF

INDEPENDENT MEDIATION ORGANIZATION the date and time when a mediation session took place and the outcome of the mediation session, i.e. “Mediated/Not Mediated.”

Confidentiality should not be construed to prohibit the effective monitoring, research, or evaluation of a mediation program by responsible persons approved by the **AGENCY NAME** and **NAME OF INDEPENDENT MEDIATION ORGANIZATION**. Under appropriate circumstances, researchers and mediation evaluators may be permitted to obtain access to statistical data and, with the permission of the parties, to individual case files, mediation sessions, observations, and interviews with participants.

XVII. THE MEDIATION PROCESS:

To ensure neutrality, mediation will be provided by the **NAME OF INDEPENDENT MEDIATION ORGANIZATION** [such as Community Mediation Maryland] that is not affiliated with the **AGENCY NAME** or any advocacy group.

The mediation process will be one that focuses on dialogue, relationships, and building understanding. There are a number of examples of mediation approaches that fit this criterion including INCLUSIVE MEDIATION, TRANSFORMATIVE MEDIATION, Narrative Mediation, and some types of Facilitative Mediation. The **NAME OF THE INDEPENDENT MEDIATION ORGANIZATION** will determine the type of mediation protocol to use for each mediation session.

At the discretion of the **NAME OF INDEPENDENT MEDIATION ORGANIZATION** one (1) or two (2) affiliated mediators will be referred to each scheduled mediation session.

The mediation session will take place in a neutral location, with all participants in a room together. A private session [caucus] will only occur when there is a concern for safety or fear of retaliation and the mediators need to explore whether to end the session.

The **NAME OF INDEPENDENT MEDIATION ORGANIZATION**, relying on its experience in facilitating community member-police complaint resolution sessions, has informed the agency that it normally uses either the INCLUSIVE Mediation Framework or the TRANSFORMATIVE Mediation Framework to conduct police complaint mediation sessions. Both of these two mediation frameworks are described below:

XVII – A: INCLUSIVE MEDIATION:

In the INCLUSIVE framework:

- a. co-mediation is almost always used;
- b. mediators do not set ground rules;
- c. mediators focus on strategically listening for values, feelings, and topics and reflect these back to the participants using language that captures the intensity the participants expressed:
 - mediator must check to make sure that the participants feel the reflection is accurate;
- d. mediators attempt to understand each participant, making it more possible for them to understand each other;
- e. mediators follow a defined process that includes time for participants to:
 - talk about whatever they chose;
 - build clarity as to what is important;
 - identify topics participants want to resolve;
 - identify the goals each participant has for each topic;
 - brainstorm options;
 - consider each of the generated options in terms of which would meet all participants’ goals; and
 - determine areas of agreement, if any;

- f. mediators rarely use caucuses:
 - do so in situations where mediators need to check if mediation is a good fit for the conflict;
- g. if agreement is reached, it can be written by the mediator based on the direction of the participants:
 - reviewed and confirmed by all participants in the mediation;
- h. mediators guide the process and the participants are in charge of whether agreement or any other outcome is reached;

One way to divide mediator techniques is listening, reflecting, reframing, summarizing, providing information, making suggestions, and persuading. INCLUSIVE mediators use listening, reflecting, and some summarizing, and do not use reframing, providing information, making suggestions, or persuading strategies.

XVII – A – 2: TRANSFORMATIVE MEDIATION:

The goal of transformative mediation is to work with people in conflict to help them change the quality of their conflict interactions from negative and destructive to positive and constructive as they discuss and explore various topics and possibilities for resolution.

In the TRANSFORMATIVE framework:

- a. mediators look for barriers to effective interactions:
 - assist the participants in dealing with and removing them;
- b. mediators look for and affirm shifts in empowerment by participants:
 - addressing each other more directly;
 - growing more articulate and fluent; and
 - showing more confidence and self-reliance and recognition:
 - talking to rather than about each other;
 - acknowledging new information; and
 - becoming more able to see the other's point of view:
 - ◆ achieved by the participants themselves;
- c. mediators reflect back:
 - using, insofar as possible, the same words and emotional expression used by the participants;
 - highlighting differences as well as commonalities between the participants;
 - asking open-ended questions to aid in broader understanding and quality decision making;
- c. if agreement is reached, it is written by the mediator at the direction of the participants:
 - reviewed and confirmed by all participants to the mediation;
- d. TRANSFORMATIVE mediation occurs with everyone in the same room relying minimally on caucus:
 - may be requested by the participants or the mediator;
- e. participants help shape the process with the mediator;
- f. mediator's goals are to:
 - assist with removing barriers;
 - fostering quality interaction and decision making:
 - from which agreement and other outcomes chosen by the participants emerge.

One way to divide mediator techniques is listening, reflecting, reframing, summarizing, providing information, making suggestions, and persuading. Transformative mediators rely primarily on listening, reflecting, and summarizing, with minimal providing information and do not rely on reframing, persuading or making suggestions.

XVIII. SELECTION OF MEDIATOR:

The NAME OF INDEPENDENT MEDIATION ORGANIZATION is responsible for selecting and referring all mediators who will participate in the AGENCY NAME Community Member-Police Complaint Mediation Program. Mediators are affiliated with the NAME OF THE INDEPENDENT MEDIATION ORGANIZATION and are individuals who are:

- ▶ Impartial [no conflict of interest];
- ▶ Trained in the Art of Mediation;
- ▶ Experienced and Competent;
- ▶ Able to Maintain Procedural Fairness during Mediation Sessions;
- ▶ Able to Maintain Confidentiality;
- ▶ Culturally Neutral.

XVIII – A. QUALIFICATIONS:

They will meet the basic qualifications for a court appointed mediator as outlined in Maryland Rule § 17-205 [Chapter 2], *Qualifications of Court-Designated Mediators:*

1. be at least 21 years old, unless waived by both parties;
2. have completed at least 40 hours of basic mediation training in a program meeting the requirements of Rule 17-104 (outlined below), or for individuals trained prior to January 1, 2013, former rule 17-106;
3. be familiar with the rules, statutes and practices governing mediation in circuit courts;
4. have mediated or co-mediated at least two civil cases;
5. complete in each calendar year four (4) hours of continuing mediation-related education in one or more of the topics set forth in Rule 17-104;
6. abide by the mediation standards adopted by the Court of Appeals;
7. submit to periodic monitoring of court-ordered mediations by a qualified mediator designated by the county administrative judge; and
8. comply with procedures and requirements prescribed in the court's case management plan filed under Rule 16-202 b relating to diligence, quality assurance and a willingness to accept, upon the request of the court, a reasonable number of referrals at a reduced fee or pro bono.

XVIII – B. TRAINING:

In addition to the basic qualifications outlined above, each mediator must successfully complete a basic MEDIATION training program as outlined in Maryland Rule § 17-104 [Chapter 1], *Basic Mediation Training Programs* which includes:

- a. conflict resolution and mediation theory, including causes of conflict, interest-based versus positional bargaining, and models of conflict resolution;
- b. mediation skills and techniques, including information gathering skills; communication skills; problem-solving skills; interaction skills; conflict management skills; negotiation techniques; caucusing; cultural, ethnic and gender issues; and strategies to:
 - 1) identify and respond to power imbalances, intimidation, and the presence and effects of domestic violence, and
 - 2) safely terminate a mediation when such action is warranted;
- c. mediator conduct, including conflicts of interest, confidentiality, neutrality, ethics and standards of practice; and
- d. simulations and role-playing, monitored and critiqued by experienced mediator trainers.

SAMPLE POLICY/PROCEDURE – FOR ILLUSTRATION PURPOSES (PTSC Adopted 4-19-17)

NOTE: In addition to the above listed qualifications, mediators affiliated with the NAME OF THE INDEPENDENT MEDIATION ORGANIZATION have also participated in an advanced sixteen (16) hour police complaint mediation skills training program.

XIX. ROLE OF THE MEDIATOR:

Mediators affiliated with the NAME OF INDEPENDENT MEDIATION ORGANIZATION:

- ▶ typically use either INCLUSIVE MEDIATION or TRANSFORMATIVE MEDIATION:
- ▶ do not set ground rules for the mediation session;
- ▶ focus on listening for values, feelings, and topics and reflect these back to the participants, checking to make sure that the participants feel the reflection is accurate:
 - while not providing information, making suggestions, or persuading strategies;
- ▶ attempt to understand each participant, thus making it more possible for them to understand each other;
- ▶ follow a defined process which includes:
 - time for participants to share the situation;
 - build clarity as to what is important;
 - identify topics participants want to resolve;
 - identify the goals each participant has for each topic;
 - brain-storm options;
 - consider each of the generated options in terms of which would meet all participants' goals; and
 - determine areas of agreement, if any;
- ▶ rarely use caucuses:
 - usually in situations where mediators need to check if mediation is a good fit for the conflict;
- ▶ if agreement is reached, write down the agreement based on the direction of the participants:
 - review and confirm the agreement with the participants;

XX. MEDIATION SESSION:

XX – A. STRUCTURE AND PROCESS:

Agency personnel should be aware that no two mediation sessions are alike. While this section of this policy and procedure is intended to provide personnel with a general picture of how a mediation session may evolve, there is no foolproof way to forecast how a particular mediation session will unfold; the particular manner in which each mediation session develops depends on the parties involved in the mediation and the issues to be discussed. Agency personnel should keep this in mind when participating in a mediation session.

In general, a mediation session evolves in the following way:

(1) mediator's OPENING REMARKS: [Some mediators may use a prepared opening statement and/or check list to ensure that they cover one or more of the following points.]

- ▶ Introduce all participants/attendees to one another;
- ▶ Qualify self as mediator;
- ▶ Explain role as mediator;
- ▶ Assert neutrality/impartiality;
- ▶ Explain the goal of the mediation session;
- ▶ Explain that mediation is NOT a legal proceeding, i.e. is not bound by rules of evidence, etc.;
- ▶ Confirm participants are voluntarily participating in the session;

- ▶ Establish ground rules for participating in the discussion;
- ▶ Explain the mediation process/stages of;
- ▶ Explain the CONFIDENTIALITY of the session;
- ▶ Commend the participants for voluntarily participating in the session;
- ▶ Address any questions;

(2) involved parties' OPENING STATEMENTS:

- ▶ each party is given an opportunity to present a statement:
 - the complainant is usually goes first;

(3) Summary/issue identification:

- ▶ mediator may summarize the problem in a neutral and evenhanded manner to ensure accurate understanding of the issue(s) to be discussed:
 - may ask parties to explain what they hope to achieve during mediation [expectations];

(4) involved parties' DISCUSSION:

- ▶ mediator helps (facilitates) the two parties to identify specific issues that need to be mediated and encourages the parties to discuss the issues with each other:
 - dialog between the two parties is the most important part of the process;
 - parties are encouraged to direct their comments to each other rather than to mediator;
- ▶ if the parties are unable to communicate with each other, mediator will attempt to serve as a buffer between them;
- ▶ the parties discuss alternative ways to resolve the dispute:
 - mediator will NOT impose a solution:
 - emphasis is on dialog and not on a quick settlement;
 - resolution of the complaint does NOT REQUIRE AN APOLOGY by either party;
- ▶ mediator encourages two parties to come up with/agree on an appropriate resolution:
 - may include but does NOT require a written settlement agreement signed by both parties:
 - in the case of community member-officer complaint mediation session a written agreement is NOT the same as an agreement required in court-ordered mediation but is intended to remind the participants of their commitment to complete the mediation process by honoring their agreement;

(5) CONCLUSION:

- ▶ typical outcome of a "successful"/effective mediation session is an understanding that the complaint is resolved to the satisfaction of both parties:
 - the two parties have had a chance to express themselves and hear the other's response even if they agree to disagree about the events;

XXI. IMPASSE:

The AGENCY NAME and the INDEPENDENT MEDIATION ORGANIZATION are reasonably confident that, once participation is agreed to by both parties, a mediation session will be an effective tool in creating dialogue and some degree of understanding between agency personnel and the complainant. However, the AGENCY NAME and INDEPENDENT MEDIATION ORGANIZATION also understand that it is possible that one or both parties may remain inflexible and not be able to move from their original position or consider alternative future actions. In some rare instances, a complainant or officer may abruptly terminate a mediation session and not agree to further discussion. In that event the mediation will be considered as at IMPASSE. The mediator will then close the session.

For its part, the AGENCY NAME considers that when the officer and complainant have agreed to disagree during a mediation session in which the parties exhibited good faith during their discussion that the original complaint is CLOSED BY MEDIATION. The AGENCY NAME considers the good faith discussion between the parties as an effective exchange of viewpoints that otherwise might not have occurred during the agency's traditional complaint investigation procedures.

XXII. ATTENDANCE OF OTHERS AT MEDIATION SESSION:

While confidentiality seems to suggest that individuals other than the two parties and the independent mediator should be excluded from a mediation session, the AGENCY NAME and NAME OF THE INDEPENDENT MEDIATION ORGANIZATION have agreed that occasionally a third party may need to be included in a mediation session, such as when the complainant is a juvenile or an individual with intellectual/mental health special needs. Those individuals may need to be accompanied in the mediation session by a parent/guardian.

In other instances, one or both parties to mediation may request that another individual accompany them as "support" during the mediation session.

In case a party requests to have another individual accompany them in the mediation session, the AGENCY NAME and NAME OF THE INDEPENDENT MEDIATION ORGANIZATION have agreed that:

1. a request for the presence of an individual to accompany one of the parties to a mediation should be communicated to the NAME OF THE INDEPENDENT MEDIATION ORGANIZATION at the time that mediation is offered to the party; in any case, the request for a "third" party appearance must be communicated to the NAME OF THE INDEPENDENT MEDIATION ORGANIZATION prior to the beginning of the scheduled mediation session;
2. the non-requesting party shall have the opportunity to withdraw from the mediation, without prejudice, when informed of the presence of a "third" party; the complaint will then be referred back to the agency for investigation;
3. the "third" party shall agree to attend the mediation session solely as an observer and will participate in the session only if and when asked to do so by the independent mediator;
4. the "third" party shall agree to and sign a Consent to Mediate Letter that includes the confidentiality requirements for attending a mediation session [Appendix A] prior to the beginning of the mediation session.

XXIII. PRESENCE OF INTERPRETERS:

If needed, the NAME OF THE INDEPENDENT MEDIATION ORGANIZATION will supply/arrange for a professional sign language or language interpreter for a mediation session for the complainant. If necessary, the AGENCY NAME will defray the costs associated with providing a professional interpreter as per its working agreement with the NAME OF THE INDEPENDENT MEDIATION ORGANIZATION. The interpreter shall agree to and sign a "Consent to Mediate Letter" that includes the Confidentiality requirements for attending a mediation session [Appendix A] prior to the beginning of the mediation session.

XXIV. LETTER OF CONCLUSION:

The INDEPENDENT MEDIATION ORGANIZATION will notify, in writing, the Mediation Program Administrator when a mediation session has been completed. This notification will occur within # of business TBD by IMO and Agency of the conclusion of the mediation session.

In keeping with the confidential nature of mediation, the Letter of Conclusion will contain only the names of the parties involved in the session and mediator, the agency control/identification number for the complaint, and the date and the time of the mediation session; the Letter of Conclusion will be accompanied by copies of the signed Consent to Mediate Letter.

XXV. WEARING THE UNIFORM:

The AGENCY NAME and NAME OF INDEPENDENT MEDIATION ORGANIZATION have agreed that agency personnel shall normally wear the uniform of the day when participating in a mediation session. Appearance in uniform is intended to ensure that the interaction between the two parties to the mediation is an authentic one, based on the reality of how the officer and citizen experienced each other in the past and may experience each other in the future.

An exception is extended to those agency personnel who are in plainclothes/undercover assignments and who's personal appearance is such that wearing the uniform of the day would not be professionally acceptable, i.e. full beard, long hair, body piercings, etc. or who are injured and cannot appear in uniform. Individuals who intend to appear at a mediation session out-of-uniform shall first consult with their immediate supervisor to determine if an appearance in uniform is appropriate or not prior to attending the mediation session.

Attendance at a mediation session by those excluded from wearing the uniform of the day shall be in appropriate court appearance [business] attire.

XXVI. USE OF VIDEO RECORDINGS DURING MEDIATION:

Video recordings of community member-law enforcement officer interactions are increasingly more available for review either because an event has been recorded by a complainant, a witness, an officer, a nearby security camera or other means. The AGENCY NAME recognizes that the recording may enable a community member and an officer to have a more enlightened discussion about an event if the recording is played during a mediation session. Therefore, based on the input of the NAME OF INDEPENDENT MEDIATION ORGANIZATION it is an acceptable practice to play video recordings of the interaction in question during a mediation session with the concurrence of the mediator. Mediators will ensure that both parties understand that the use of a video recording is not intended to assign blame to any party but to facilitate discussion between the parties.

Any video/audio recording from an agency body-worn camera or in-car video system shall be obtained as per established policy and redacted as appropriate prior to use during a mediation session. Because each camera video/audio recording is the property of the AGENCY NAME it is to be returned to the administrator of the agency's BWC or in-car video program as soon as practical after the mediation session is concluded by the officer who requested the recording.

XXVII. SESSION LENGTH:

Given the fact that a mediation session is dialogue-driven, it is typically scheduled to last for two (2) hours by the NAME OF INDEPENDENT MEDIATION ORGANIZATION although a session can be concluded before the end of the 2 hours. Likewise, if additional time is needed as determined by the independent mediator, it can continue upon agreement of the parties or another mediation session can be scheduled.

XXVIII. COMPLAINT CLOSURE:

The AGENCY NAME and the NAME OF INDEPENDENT MEDIATION ORGANIZATION have agreed that if both the officer and the community member attend and participate in the mediation session, then the case is closed with an outcome of “CLOSED BY MEDIATION.” Complaints that are “CLOSED BY MEDIATION” will be labeled as such and may be expunged from an officer’s file under the same rules that apply to an “UNSUSTAINED”/“NOT SUSTAINED” complaint under PS § 3-110 and the existing disciplinary policies and procedures of this agency. Complainants will be advised of this point of order prior to the mediation session.

XXIX. TRAINING:

The Mediation Program Administrator, with the input and assistance of the NAME OF INDEPENDENT MEDIATION ORGANIZATION will develop agency orientation/training into the mediation process for all agency personnel prior to implementation of the Community Member-Police Complaint Mediation Program.

Additionally, the Mediation Program Administrator will provide training on the program to new agency personnel as warranted and follow-up training as needed.

Likewise, the AGENCY NAME and NAME OF INDEPENDENT MEDIATION ORGANIZATION will offer a reasonable number of public orientation sessions to community organizations, elected public officials, the media and other interested community stakeholders prior to beginning the program.

Both the AGENCY NAME and the NAME OF THE INDEPENDENT MEDIATION ORGANIZATION will co-produce an information brochure on the Community Member-Police Complaint Mediation Program available for distribution to the public. A copy of the brochure will be posted on each entity’s website.

XXX. EVALUATION – MEDIATION SESSION:

Before the mediation session begins the mediator may ask the complainant and law enforcement officer to complete the Pre-mediation Survey that appears in Appendix B. This survey is intended to determine:

- a. the attitude of the complainant towards the agency and law enforcement officers
- b. the attitude of the law enforcement towards the complainant and community:
 - prior to the mediation session beginning; and
- c. if either party experiences a change in attitude after the mediation session is completed.

The survey is for the use of the NAME OF THE INDEPENDENT MEDIATION ORGANIZATION to gauge the effectiveness of the mediation process. The statistical results developed from these surveys will be shared with the agency as part of the NAME OF THE INDEPENDENT MEDIATION ORGANIZATION’S annual report.

At the conclusion of a mediation session, the mediator, on behalf of the NAME OF INDEPENDENT MEDIATION ORGANIZATION, will request that each party, including the mediator, complete a brief evaluation of the mediation process [See Appendix C]. Those evaluations will be collected by the mediator and returned to the NAME OF INDEPENDENT MEDIATION ORGANIZATION for review. The results will be shared with the Mediation Program Administrator with the intent of improving the complaint mediation program as part of its annual report.

The NAME OF THE INDEPENDENT MEDIATION ORGANIZATION will not share the results of any individual surveys or evaluations with the AGENCY NAME but will report their findings in an aggregate manner in its annual report about the program.

SAMPLE POLICY/PROCEDURE – FOR ILLUSTRATION PURPOSES (PTSC Adopted 4-19-17)

The NAME OF INDEPENDENT MEDIATION ORGANIZATTION will also conduct an evaluation survey using a modified version of the same form [See Appendix D] one month after the mediation session has concluded and share those results with the Mediation Program Administrator as part of its annual report.

The Mediation Program Administrator with the assistance of the NAME OF THE INDEPENDENT MEDIATION ORGANIZATION, will compile an annual report of mediated complaints with a summary of the type of complaint mediated. This report will be made part of the agency's annual report and distributed as appropriate and will be published on the agency's website.

XXXI. POLICY AND PROCEDURE REVIEW:

The Mediation Program Administrator, in concert with the NAME OF THE INDEPENDENT MEDIATION ORGANIZATION, will periodically review and have the Community Member – Police Complaint Mediation Program policy and procedure revised, as necessary. Review and revision will take place according to the established time table for policy review used by the AGENCY NAME.

The revised policy will be posted on the agency's website and provided to the NAME OF THE INDEPENDENT MEDIATION ORGANIZATION.

APPENDIX A:

Consent to Mediate/Confidentiality Agreement

By signing below, I agree to participate in mediation conducted by this Community Mediation Center. I understand that:

- The discussions in this mediation and those with the mediation program staff will remain confidential. This means that the mediators and staff will not share information gathered during intake or during this mediation session with anyone outside of the program.
- All participants in the mediation, other than the mediator, are free to talk about what was said in mediation with others (other than in a judicial, administrative, or other hearing), unless they agree otherwise in writing.
- The mediators and program staff will not voluntarily share any information from the mediation in any judicial, administrative, or other hearing. We (mediation participants) will not voluntarily share this information in a judicial, administrative, or other hearing. It is our intention to comply with annotated Code of Maryland Section 3-1802 and Judiciary Rule Title 17, which state that mediators and mediation participants “may not disclose or be compelled to disclose mediation communication in any judicial, administrative, or other proceeding.”
- Information regarding child abuse, abuse of vulnerable adults or credible threats to do bodily harm are exceptions to confidentiality, and may be disclosed.
- Unless we agree otherwise in writing, any written agreement which comes out of mediation is not considered confidential.
- The mediators signing below have read and, consistent with state law, will abide by the Maryland Standards of Conduct for Mediators during this mediation session. Participants are welcome to request a copy of these standards and a copy can be found at www.mdmediation.org.
- Mediation is a voluntary process and each participant may withdraw from the mediation process at any point during the mediation.
- In the mediation process, I will be responsible for making my own decisions. The mediators will facilitate the process and are prohibited from giving advice or suggestions. Because the decisions made here are mine, I will not hold CMC liable for any decisions made here.

We, the undersigned, consent to mediate. We understand that agreements reached in mediation may be enforceable contracts.

Name: _____

Signature: _____

Date: _____

Name: _____

Signature: _____

Date: _____

Parent/Legal Guardian (for participants under 18)

Name: _____

Date: _____

Mediator's Name: _____

Date: _____

Mediator's Name: _____

Date: _____

Observer's Name: _____

Date: _____

Observer's Name: _____

Date: _____

File #: _____

Appendix B:

Police Complaint Mediation Evaluation

COMMUNITY MEMBER: PRE - Mediation

Please evaluate the mediation process by rating the following items in terms of whether you strongly agree, agree, neither agree nor disagree, disagree, or strongly disagree. Your answers will help us to improve our services. Thank you.

BIRTHDATE: _____

	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree
I have respect for the police officer with whom I am about to mediate.					
I have respect for the police, in general.					
I trust the police officer with whom I am about to mediate.					
I trust police, in general.					
Police officers generally respect the communities they serve.					
The officer involved in this incident respects the community they serve.					
If I knew about a crime or incident in the neighborhood, I would share it with the officer with whom I am about to mediate.					

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Police Complaint Mediation Survey

OFFICER: PRE-Mediation

Please evaluate the mediation process by rating the following items in terms of whether you strongly agree, agree, neither agree nor disagree, disagree, or strongly disagree. Your answers will help us improve our services. Thank you.

BIRTHDATE: _____

	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree
The community has respect for the police.					
The person with whom I am about to mediate has respect for the police.					
If the person with whom I am about to mediate knew about a crime or incident in the neighborhood, they would share it with me.					
I have respect for the community I serve.					
I have respect for the person with whom I am about to mediate.					
I trust the people of _____, in general.					
I trust the person with whom I am about to mediate.					

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APPENDIX C:

Police Complaint MEDIATION EVALUATION FORM: [POLICE OFFICER](#)

Please evaluate the mediation process by rating the following items in terms of whether you strongly agree, agree, neither agree nor disagree, disagree, or strongly disagree. Your answers will help us improve our services. Thank you.

BIRTHDATE: _____

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
1) The mediation process was adequately explained to me by the mediators and/or the program staff.					
2) As a result of the explanation of mediation, I understood the mediation process before the session began.					
3) The mediators listened to what I had to say without judging me or my ideas.					
4) I was able to express myself, my thoughts, and my concerns during the mediation process.					
5) Through this process, I think I understand the other people involved in the conflict better.					
6) Through this process, I think the other people involved in the conflict understand me better.					
7) I would bring other conflicts to mediation in the future.					
8) I would recommend mediation to others involved in conflicts.					
9) As of today, I am satisfied with the process of mediation.					
10) As of today, I am satisfied with the results of the mediation.					

Feel free to elaborate on your responses to any of the above questions.

Did you reach an agreement in the mediation? Yes No

Do you think your conflict is resolved? Yes No

Who came up with the ideas for solutions? (check all that apply)

I did the other participant did the mediators did n/a didn't get to solutions today

For Office Use Only:

See back for Police Complaint Mediation survey.

	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree
The community has respect for the police.					
The person I mediated with has respect for the police.					
If the person I mediated with knew about a crime or incident in the neighborhood, they would share it with me.					
I have respect for the community I serve.					
I have respect for the person I mediated with.					
I trust the people of _____, in general.					
I trust the person I mediated with.					
The mediation helped build mutual respect between the resident and me.					
The mediation helped me gain a better understanding of how my manner of policing affects other people.					
The mediation helped me better understand the actions and thoughts of the resident at the time of the incident.					
Based on what I learned in mediation, I would probably respond differently in a similar situation in the future.					

What did you like best about the mediation process?

What suggestions do you have to improve the mediation process and program?

Anything else?

Police Complaint MEDIATION EVALUATION FORM: COMMUNITY MEMBER

Please evaluate the mediation process by rating the following items in terms of whether you strongly agree, agree, neither agree nor disagree, disagree, or strongly disagree. Your answers will help us improve our services. Thank you.

BIRTHDATE: _____

	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
1) The mediation process was adequately explained to me by the mediators and/or the program staff.					
2) As a result of the explanation of mediation, I understood the mediation process before the session began.					
3) The mediators listened to what I had to say without judging me or my ideas.					
4) I was able to express myself, my thoughts, and my concerns during the mediation process.					
5) Through this process, I think I understand the other people involved in the conflict better.					
6) Through this process, I think the other people involved in the conflict understand me better.					
7) I would bring other conflicts to mediation in the future.					
8) I would recommend mediation to others involved in conflicts.					
9) As of today, I am satisfied with the process of mediation.					
10) As of today, I am satisfied with the results of the mediation.					

Feel free to elaborate on your responses to any of the above questions.

Did you reach an agreement in the mediation? Yes No

Do you think your conflict is resolved? Yes No

Who came up with the ideas for solutions? (check all that apply)

I did the other participant did the mediators did n/a didn't get to solutions today

See back for Police Complaint Mediation survey.

For Office Use Only:

	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree
I have respect for the police officer I mediated with.					
I have respect for the police, in general.					
I trust the police officer I mediated with.					
I trust police, in general.					
Police officers generally respect the communities they serve.					
The officer involved in this incident respects the community s/he serves.					
If I knew about a crime or incident in the neighborhood, I would share it with the officer I mediated with.					
The mediation helped build mutual respect between the officer and me.					
The mediation helped me gain a better understanding of policing, police practices, or police policies.					
The mediation facilitated a greater understanding of the actions of the police officer at the time of the incident.					
Based on what I learned in mediation, I would probably respond differently in a similar situation with a police officer in the future.					

What did you like best about the mediation process?

What suggestions do you have to improve the mediation process and program?

Anything else?

Appendix D:

Police Complaint Mediation Evaluation

POLICE OFFICER: ONE MONTH LATER

Please evaluate the mediation process by rating the following items in terms of whether you strongly agree, agree, neither agree nor disagree, disagree, or strongly disagree. Your answers will help us improve our services. Thank you.

BIRTHDATE: _____

Revised 1/16

	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree
The community has respect for the police.					
The person I mediated with has respect for the police.					
If the person I mediated with knew about a crime or incident in the neighborhood, they would share it with me.					
I have respect for the community I serve.					
I have respect for the person I mediated with.					
I trust the people of _____, in general.					
I trust the person I mediated with.					
The mediation helped build mutual respect between the resident and me.					
The mediation helped me gain a better understanding of how my manner of policing affects other people.					
The mediation helped me better understand the actions and thoughts of the resident at the time of the incident.					
Based on what I learned in mediation, I would probably respond differently in a similar situation in the future.					

What did you like best about the mediation process?

What suggestions do you have to improve the mediation process and program?

Anything else?

Police Complaint Mediation Evaluation

COMMUNITY MEMBER: ONE MONTH LATER

Please evaluate the mediation process by rating the following items in terms of whether you strongly agree, agree, neither agree nor disagree, disagree, or strongly disagree. Your answers will help us improve our services. Thank you.

BIRTHDATE: _____

	Strongly Disagree	Disagree	Neither Agree nor Disagree	Agree	Strongly Agree
I have respect for the police officer I mediated with.					
I have respect for the police, in general.					
I trust the police officer I mediated with.					
I trust police, in general.					
Police officers generally respect the communities they serve.					
The officer involved in this incident respects the community s/he serves.					
If I knew about a crime or incident in the neighborhood, I would share it with the officer I mediated with.					
The mediation helped build mutual respect between the officer and me.					
The mediation helped me gain a better understanding of policing, police practices, or police policies.					
The mediation facilitated a greater understanding of the actions of the police officer at the time of the incident.					
Based on what I learned in mediation, I would probably respond differently in a similar situation with a police officer in the future.					

What did you like best about the mediation process?

What suggestions do you have to improve the mediation process and program?

Anything else?

APPENDIX E:

AGENCY COMPLAINT PROCESS BROCHURE

Adopted by the Police Training and Standards Commission, April 19, 2017