

PROFESSIONAL CONDUCT UNIT

STANDARD NO(S): NYSLEAP Chapter 25

DATE: Updated December 2017

REFER TO: Undersheriff

I. OBJECTIVE:

To establish a functional component within the OCSO, on an as needed basis, with the responsibility to investigate and resolve, fully and objectively, complaints about the OCSO or allegations of misconduct made against its members; and, to monitor the professional conduct, integrity and discipline of each OCSO member.

II. POLICY:

It shall be the policy of the OCSO to investigate fully complaints against the agency and its members. It shall also be the policy of the OCSO to reach a prompt resolution of such complaints or allegations, after an objective and impartial investigation, in order that, while maintaining the credibility and integrity of the OCSO, the public will be assured that police misconduct will not be tolerated, but, at the same time, provide a mechanism through which a member, unjustly accused, can be vindicated.

III. DETAILS:

A. Functions - The Professional Conduct Unit (PCU) shall be responsible for receiving, processing, supervising and controlling any investigation arising from a complaint or allegation made against the OCSO or any of its members.

B. General -

1. It is essential that the citizens of Ontario County have confidence in their Sheriff's Office and in the administration which supervises the exercise of police authority. Toward this end, procedures for expeditious processing of allegations of misconduct by members must be instituted.

2. Citizens are encouraged to come forward with any legitimate complaints of misconduct by OCSO members. These complaints will be received courteously and handled in an efficient manner. All OCSO members will assist and cooperate in this process in accordance with established procedures.

3. It is recognized that OCSO employees are often subject to intense pressures in the discharge of their duties. It is imperative that employees remain calm and neutral under circumstances that are likely to generate tension, excitement and emotion. In such situations, words, actions and events frequently result in misunderstanding and confusion.

It benefits both the community and OCSO employees to have in place a procedure for the investigation of allegations and their underlying causes. Standardized procedures insure that the investigations will be conducted in a consistent and professional manner.

4. These procedures will apply to any legitimate complaint or allegation of misconduct against an employee or the Sheriff's Office. Anonymous complaints must also be investigated insofar as possible with the information provided.

C. Organization and authority -The Undersheriff shall be responsible for the Professional Conduct Unit (PCU) and shall have the duty to coordinate investigative efforts by command or supervisory personnel. Because of the sensitivity and potential impact of investigations alleging misconduct, the Undersheriff shall report to the Sheriff the commencement, status and disposition of all PCU investigations. The Undersheriff shall keep and secure all records of internal investigations making copies only with the approval of the Sheriff.

D. Duties and responsibilities -

1. Assuring proper employee conduct is a responsibility of command. This directive is not intended to relieve supervisory personnel of their responsibility. Supervisors shall, whenever practical, take action on any complaint against an employee which is of a minor nature, the result of a misunderstanding, or which needs little or no investigation before it can be resolved.

Alleged behavior or conduct involving rudeness, tardiness, insubordination, misuse of county property, unsafe driving, improper procedural matters or any other conduct unbecoming a member of the OCSO, depending upon the seriousness of the allegation, may not result in an investigation by the PCU, but rather, may be investigated by a member's immediate supervisor as a disciplinary matter. (See "Code of Conduct" paragraph E., this Manual)

2. Citizen complaints against employees that cannot be resolved by line supervisors shall be referred to the PCU who shall conduct a thorough investigation and, thereafter, render fair and impartial evaluations of all complaints so referred.

3. The PCU shall review all complaints of the following (in addition to conducting investigations into complaints that cannot be resolved by the immediate supervisor):

- a. Allegations of excessive force;
- b. Allegations of criminal conduct;
- c. Deprivation of civil rights;
- d. Allegations of corruption or dishonesty; and,
- e. Allegations of unlawful arrest.

E. Receiving and recording complaints -

1. A "Citizen's Comment Form" (OCSO-2) shall be made available for receiving comments from citizens, and shall be publicized through the regular community relations activities such as Neighborhood Watch, etc. The form shall also be available at the Sheriff's Office, at substations, on the website at <http://www.co.ontario.ny.us/DocumentCenter/View/901>

2. Any employee of the Sheriff's Office is authorized to receive a complaint against or comment in favor of any other employee, OCSO rule or procedure.

a. Any employee receiving a minor complaint from a citizen, if knowledgeable about the situation, should attempt to resolve the complaint by giving an explanation to the citizen, if possible.

b. If the employee cannot resolve the complaint with an explanation, or if the citizen wishes further action, the latter shall be provided with a "Citizen's Comment Form" at that time, or by mail immediately thereafter.

3. All employees are strictly charged with the responsibility of courteously receiving any complaints that may be lodged against the OCSO or any employees thereof, whether made in person, or by telephone or mail.

4. The following procedure will be followed upon receipt of a complaint against personnel of the Ontario County Sheriff's Office, which complaint cannot be resolved as in paragraph 2(a) above:

a. As noted above, the vehicle for recording complaints is Form OCSO-2, to be executed by the receiving member. Calls to the Comcenter shall be forwarded to the appropriate supervisor for handling or call back. If the PCU will obviously be involved, caller shall be advised that the matter will be handled administratively.

b. If the complaint concerns an employee, the completed OCSO-2 shall be referred to the employee's immediate supervisor. If this person is not available, referral shall be to the next level of supervision.

c. If the complaint can be resolved by the supervisor, the supervisor shall document the resolution and forward the completed form to the Chief Deputy or to the Chief Correction Officer, as appropriate. If the complaint cannot be resolved by the supervisor, a notation to this effect shall be made on the form and it shall be forwarded through the chain of command to the Chief Deputy or the Chief Correction Officer.

d. The Chief Deputy or Chief Correction Officer shall acknowledge receipt of the form by signing and retaining one copy. The original and one copy shall be forwarded to the PCU.

e. The PCU shall forward the copy to the Sheriff for notification and shall retain the original in a file kept for this purpose.

f. The PCU shall maintain a log of all comment forms received, indicating those resolved at the supervisory level and those requiring investigation.

g. Upon receipt of a complaint for investigation, the PCU shall notify the complainant by sending a written notice acknowledging the complaint. The complainant shall also be notified upon completion of the investigation.

F. Notification to Employee - Notification to an employee is discretionary with the PCU and will depend upon the nature of the complaint and the need for a confidential investigation. When either the employee or the employee's supervisor is to be notified, it shall be by a copy of Form OCSO-2 or, alternatively, by a written statement of the allegations including identification of the source of the complaint. A member who is being investigated by the PCU shall be served written notice:

1. Of the specific prohibited conduct which has been alleged, and of the names of those making the allegations;

2. That if the investigation concludes with the imposition of some adverse action, and the member commences a grievance under the provisions of the employees' contract, that the complainant(s) may be required to testify in an arbitration hearing or in a court of law;

3. That all complainants, witnesses (sworn or civilian) and subject member are prohibited from discussing the case with anyone other than the PCU; and,

4. That subject member may be asked to provide a written statement or other evidence in response to any allegation or inquiry by the investigating supervisor or the PCU. Failure to do so may be considered insubordinate thus initiating disciplinary action which could result in reprimand, suspension or dismissal.

G. Rights and responsibilities -

1. When deemed appropriate during the conduct of an internal affairs investigation, and when specifically directed and narrowly related to said investigation, the Sheriff may issue a signed order requiring the subject member, at OCSO expense, to cooperate by:

- a. Submitting to laboratory or medical examinations, including one designed to detect the use of drugs where there is reason to believe member is using drugs,
- b. Making oneself available for the taking of photographs and fingerprints,
- c. Participating in a line-up,
- d. Furnishing a financial disclosure statement.

Issuance and exercise of this order shall not prohibit subject member from seeking one's own self-directed examinations, photographs, disclosures, etc., at one's own expense, once compliance with the order has been effected.

2. If the accused employee is under arrest, or is likely to be placed under arrest as a result of an investigative interview, a Miranda warning shall be given and a waiver shall be obtained prior to the commencement of the interview.

3. Sheriff's Office employees shall not be afforded any preferential treatment in cases involving violations of the law.

4. Members of the immediate family of an employee shall not be required to give a statement to any PCU investigator; nor shall an employee be subjected to a search of one's residence or place of business without one's consent or a search warrant. Voluntary statements or searches are not precluded. Any OCSO equipment, vehicle or locker may be inspected and/or searched at any time.

5. An employee requesting a copy of the results of one's own PCU investigation shall do so in writing to the Sheriff.

H. Records - To ensure the confidentiality of all records generated in connection with an internal affairs investigation by the PCU, the Undersheriff shall arrange for and supervise their secure storage within the confines of the OCSO. Such records shall be maintained outside both the regular personnel files and the Records Division and shall not be released except to comply with state or local laws, or a court order. [See Public Officers Law, Section 87(2)(b)]

J. Polygraph - In accordance with federal law, specifically 29 CFR Part 801 entitled, "Employee Polygraph Protection Act of 1988," which act exempts federal state and local government employees from compliance therewith, a member of the OCSO who is the subject or a witness in an internal affairs investigation may be required to undergo a polygraph examination. NOTE: Information developed as a result of any mandated polygraph examination may be used only for administrative purposes and shall not be used for any subsequent criminal proceeding.

K. Time limits/communications -

1. The Sheriff shall be notified immediately and in writing (a copy of the Citizen's Comment Form will suffice) of accusations against members involving criminal activity, gross misconduct, or in any case in which the PCU would be required to investigate.

Citizen complaints involving less serious transgressions, such as rudeness, tardiness, etc., shall be brought to the attention of the Sheriff when appropriate, through the chain of command, with a copy of the Citizen's Comment Form(CCF), no later than 48 hours after receipt.

1. Except as noted in ¶ 4 below, complainants will receive an update or final disposition of the complaint within 7 days of its receipt.

Protracted investigations will be updated to the complainant every 7 days thereafter, with final disposition to occur within 30 days of the original receipt, unless extended by the authority of the Sheriff. That member of the PCU to whom the investigation is assigned shall be responsible for complying with the provisions for such notification.

3. The Sheriff shall be advised of the progress of the PCU investigation at least once a week.

4. In the event the CCF indicated that the complainant intends to file a notice of claim against the county or, if subsequent developments suggest that a claim may result, the County Attorney shall be notified immediately and all further correspondence with the complainant will be conducted by the County Attorney's Office. The County Attorney will attempt to comply with times set for response and disposition and will keep the Sheriff advised as to the progress of the complaint.

5. Consultation with the County Attorney/District Attorney -In order to further protect the integrity of the OCSO and its members, accusations against members alleging criminal activity or activity which would reasonably incur liability for the County, will require consultation with the appropriate office by the PCU.

In the case of the former, and where at the completion of a PCU investigation such conduct appears probable, the Sheriff, or a designee, shall initiate a meeting with the District Attorney. The meeting shall be for the purpose of providing all of the facts, all inculpatory and exculpatory evidence, and to seek an opinion as to whether prosecution should be undertaken. It should be recognized that the Sheriff is also free to consult with the District Attorney during the investigation in order to obtain legal advice or assistance in case preparation.

6. In some cases the extent of the investigation may be limited to substantiating the falsity of the accusations. In others, the investigation may conclude with the matter being referred to the District Attorney's Office for prosecution under New York State statutes proscribing false statements and false reports.

7. Supervisory investigations -As stated under paragraph D. above, supervisory personnel shall have the authority to investigate allegations of minor misconduct; however, when criminal conduct is alleged or if the incident, by itself or with other incidents, threatens the proper operation of the OCSO, the matter shall be referred to the PCU, via the Undersheriff, who shall cause an investigation without delay. In cases of questionable circumstances or outcome, the supervisor shall consult with the Undersheriff to determine the course of the investigation.

8. Purging PCU files -Those investigations where litigation is pending and the complaint was unfounded or unsubstantiated will not be purged until final disposition. Investigations that are three years old and classified as unfounded or unsubstantiated may be purged with the approval of the Sheriff. Substantiated complaints will not be purged.

L. Dispositions - Completed investigations by the Professional Conduct Unit will be classified as one of the following:

1. Sustained - The act occurred and constitutes misconduct or at least an error in judgment; or
2. Not Sustained - There was insufficient information or evidence to prove, or disprove, the accusation; or
3. Exonerated - The member's conduct described in the complaint was justified, lawful and proper; or
4. Unfounded - The act complained of apparently did not occur; or
5. Policy Failure - The member's conduct, while not desirable under the circumstances, could be justified under some interpretation of a regulation and may indicate a failure of that policy to be pertinent, current and unambiguous. In the event of this finding, the matter will be submitted through the chain of command for clarification and determination.

M. Reports - The Professional Conduct Unit shall maintain statistical information, which shall be summarized annually for inclusion in the OCSO Annual Report and for distribution to any

interested party, including the news media, upon request. Such information shall be as follows:

1. The number of complaints received from citizens. (Not counting those immediately satisfied per paragraph D(2)(a) above)
2. The number of complaints received from arrestees. (Inmates' complaints are logged separately by the Corrections Bureau)
3. The number of complaints received from other sources.
4. The number of investigations made on citizen complaints.
5. The number of investigations made on arrestees' complaints.
6. The number of investigations initiated by other sources.
7. The number of complaints sustained, not sustained, exonerated, unfounded, or attributed to policy failure in each category above.
8. The number of substantiated complaints of the following, by type:
 - a. Criminal felony charges.
 - b. Criminal misdemeanor/violation charges.
 - c. Serious violations of OCSO policy. (Those resulting in termination, long term suspension or reduction in pay.)
 - d. Other violations of OCSO policy.

N. Relief from duty - Relief from duty may be a temporary administrative action due to a member's physical or psychological fitness for duty or an action pending disposition of an internal affairs investigation. The employees' contract states,

"An employee may be immediately suspended or fired when his continued presence on the job is a threat to the safety of his fellow officers or the public, or is so disruptive that normal operations are impaired. Such an employee, however, will receive an NPDA (Notice of Proposed Disciplinary Action) as soon as practicable, and shall be entitled to file a grievance."

The grievance procedure states,

"As it relates to discipline, this procedure does not apply to probationary or provisional employees..."

The authority to relieve a member from duty shall extend to supervisory personnel levels. The authority to fire an employee rests solely with the Sheriff or Undersheriff, but may be based on a recommendation from supervisory or administrative personnel. Arrest or indictment for a crime may cause immediate suspension of a member from the OCSO.

O. Light duty -The employees' contract states,

"...the Sheriff, after receiving an opinion from county physicians, or an opinion from the individual's own doctor or any physician appointed for the purpose by the municipality, that the individual is unable to perform his regular duties as a result of such injury or sickness but is capable of performing specified types of light duty, determines that such individual is capable of such light duty assignment, the Sheriff shall order the individual to report for such available light duty at a certain date by mailing said notice to the individual at the address provided in the application."