

Orono Police Department

Standard Operating Procedures **Complaints Against Law Enforcement Agency Personnel/ Internal Affairs** Number: 4-10

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Adopted: 10/13/1999

PERSONNEL PROCEDURES

**SUBJECT: Complaints against Law Enforcement Agency
Personnel/Internal Affairs**

EFFECTIVE DATE: 10/14/19

REVIEW DATE: 10/01/20

AMENDS/SUPERSEDES: 11/01/17

APPROVED: _____

**Joshua W. Ewing
Chief of Police**

I. POLICY:

The image of the Orono Police Department depends on the personal integrity and discipline of all agency employees. To a large degree, the public image of this agency is determined by the professional response of the agency to allegations of misconduct against it or its employees. The agency must competently and professionally investigate all allegations of misconduct by employees and complaints bearing on the agency's response to community needs.

II. PURPOSE:

To describe procedures for making complaints against agency personnel. For investigating complaints, and to list and define the dispositions of complaints.

III. PROCEDURES – GENERAL:

- A. This agency encourages citizens to bring forward legitimate grievances regarding misconduct by employees. Agency employees shall receive complaints courteously and shall handle them efficiently. All employees are obligated to explain to inquiring citizens the complaint procedures.
- B. This agency recognizes that its employees are often subject to intense issues in the discharge of their duties. Employees must remain 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 is to the advantage of all employees to have a procedure for the investigation of the more serious allegations and underlying circumstances so that complaints can be resolved in light of the complicated pressures of their work.
- C. A copy of "How To Make A Complaint" will be posted in the public area of the Orono Police Department, and may be given to any citizen requesting information on how to make a complaint against the agency or an employee of the agency department. A copy of "How to Make a Complaint," is found in Appendix #1 to this order.
- D. Responsibility for Handling Complaints:
 - i. As a rule, complaints regarding law enforcement operations will be handled through the chain of command. Complaints involving how law enforcement service is provided or a failure to provide service or improper attitudes or behavior will normally be investigated and handled by the supervisor. The Chief of Police may ask an investigator from another agency to undertake the investigation.
 - ii. The determination whether or not an Internal Affairs (IA) Investigation is officially opened will be determined by the Chief of Police. The

Chief of Police may consider, but is not limited to the following issues in determining if an incident warrants an official IA investigation.

- a) Situations when a supervisor insists.
 - b) Situations when a citizen insists.
 - c) Repeated patterns of performance deficiencies.
 - d) Alleged criminal conduct.
 - e) Serious complaints.
- iii. The Chief of Police will be notified of all complaints by any supervisors receiving a complaint on an Orono Police Department employee.

E. Receipt of complaints:

1. Complaints, regardless of nature, can be logged in person, by mail, or by phone at any time. As part of the follow-up investigative activity, persons making complaints by mail or phone will normally be interviewed and a written, signed complaint prepared. Anonymous complaints will be followed up to the extent possible.
2. Every effort may be made to facilitate the convenient, courteous and prompt receipt and processing of citizen complaints. An employee of the agency, who interferes with, discourages or delays the making of such complaints shall be subject to disciplinary action.
3. Normally, a citizen with a complaint will be referred to the Captain who will assist the citizen in recording pertinent information. The Captain will, if appropriate, conduct a preliminary investigation.
4. If the supervisor or other investigators determine that the complainant is apparently under the influence of an intoxicant or drug, or is apparently suffering from a mental disorder, or displays any other trait or condition bearing on the complainant's credibility, they shall note such conditions on the reverse side of the complaint form. Any visible marks or injuries relative to the allegation shall be noted and photographed.
 - i. Prisoners or arrestees may also make complaints, although circumstances may require an agency representative to meet the complainant at a jail or prison for an interview. If appropriate, the Orono Police Officer representative will have photographs taken of the prisoner's injuries.
5. An agency member receiving a citizen complaint through the U.S mail shall place the correspondence in a sealed envelope and forward it to the Chief of Police, who will determine the investigative responsibility.
6. Complaints received on the telephone by employees will be courteously and promptly referred to the supervisor. The employee

shall record the name and telephone number of the complainant and state that the supervisor shall call back as soon as practicable.

7. Complaints will not normally be accepted more than thirty (30) days after the alleged incident, with the following exceptions:
 - i. When the act complained of is a criminal violation, in which case the criminal statute of limitations will prevail.
 - ii. When there is good cause for not making the complaint earlier.
8. The above procedure may also be used when agency employees desire to enter a complaint against any other employee governed by this order.

F. Disposition of Complaints:

The Captain shall:

1. Notify the complainant, in writing, as soon as practicable, that the agency acknowledges receipt of the complaint, that the complaint is under investigation, that the investigation will be completed within thirty (30) days, and that the complainant will be advised of the outcome. If the investigation exceeds thirty (30) days, the Captain shall write the complainant a letter explaining the circumstances of the delay.
2. Maintain in a secure area a record of all complaints against the agency and its employees and protect the confidentiality in accordance with Maine Law. It is preferable that complaint files will be maintained separately from personnel files.
3. Take appropriate disciplinary action following the investigation.
4. If the Captain is the subject of the complaint, the Chief of Police shall administer the investigation. The Town Manager shall investigate complaints involving the Chief of Police.

G. Disposition of Serious Complaints:

1. Serious complaints alleging violations of the law or gross negligence in violating or failing to enforce civil rights of citizens. The term "serious complaint," in this manual, is synonymous with "internal investigation." For example, internal investigations examine alleged brutality, gross excesses of legal authority, or allegations, involving supervisory personnel or multiple police personnel.
2. In such cases, the designee of the Chief of Police shall:
 - i. Directly investigate such allegations, except for violations of law or civil rights where the designee, may turn the investigation over to the appropriate law enforcement agency.
 - ii. Upon assignment of an internal affairs investigation, or at the most appropriate time during the investigation, the Police Chief or designee will notify the employee who is the subject

of the complaint in writing of the allegations, and the employee's rights and responsibilities relative to the investigation.

- iii. Ensure that the investigation is conducted in accordance with the union contract, and contemporary legal and professional personnel administration procedural standards.
- iv. Maintain close liaison with the District Attorney or the Attorney General's office in investigating alleged criminal conduct. Where liability is at issue, the Chief of Police shall similarly maintain contact with the agency attorney.

IV. PROCEDURES – INVESTIGATIVE

Two types of investigations may take place, administrative or criminal. Different rules govern interviews of employees in each case. In all cases involving alleged criminal conduct by an Orono Police employee, the Chief of Police shall contact the office of Attorney General or the District Attorney. The Attorney General or the District Attorney will determine which technique is to be used by the agency for the investigative process.

- A. Interview for Administrative Purposes: The Chief of Police or another interviewer may advise the employee that:
 1. The purpose of the interview is to obtain information to determine whether disciplinary action is warranted. The answers obtained may be used in disciplinary proceeding resulting in reprimand, demotion, suspension, or dismissal.
 2. All questions specifically related to employment must be fully and truthfully answered. Refusal to answer may result in disciplinary action.
 3. No answers given or any information obtained by reason of such statements may be admissible against the employee in any criminal proceeding. Read to the following:

"I wish to advise you that you are being questioned as part of an official investigation of this agency. You will be asked questions specifically directed and narrowly related to the performance of your official duties or fitness for office. You are entitled to all the rights and privileges guaranteed by the laws and the Constitution of this State and the Constitution of the United States, including the right not to be compelled to incriminate yourself. I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties or fitness for duty, you may be subject to agency charges which could result in your dismissal from

the agency. If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to subsequent agency charges.”

4. In an interview for administrative purpose, no Miranda rights are required. Further, the foregoing rules are inconsistent with Miranda in that employee’s statements cannot be used as evidence. Further, as the interview does not serve criminal prosecution, the employee has no Sixth Amendment right to counsel.

- i. The governing case is Garrity v. New Jersey, 385 U.S. 483, 87 S. Ct. 616 (1967).

5. All administrative investigations shall be conducted without unreasonable delay. An employee shall be advised of the final outcome of the administrative investigation in writing within thirty (30) days of the interview. If for any reason the investigation cannot be conducted within a thirty (30) day time period, the employee being investigated shall be given an explanation of the delay and be advised of the outcome within ten (10) days of the completion of the investigation.

B. Interviews for Criminal Investigative Purposes: The Chief of Police or other interviewer shall:

1. Give the employee Miranda rights, if the employee is a subject of a custodial interrogation.
2. Advise the employee that if the employee asserts the right not to answer questions, no adverse administrative action will be taken based upon the refusal.
 - i. Note that the Miranda admonition includes the provision that a lawyer may be present at an interview. Although technically the employee has no right to counsel until the employee has been criminally charged or his or her freedom of action has been deprived, the agency wishes the employee to have the option. The agency wishes no possibility to arise in which its actions might be construed as coercive.

V. INVESTIGATIVE TOOLS AND RESOURCES:

In addition to interviews of the employee and witnesses, the Chief of Police may require other activities in support of a complaint investigation or in internal investigation, including:

A. Medical and Laboratory Examination:

All such tests must comply with Chapter 7, subchapter III-A, Title 26 MRSA, as amended from time to time. The Chief of Police may, based on his observation, require an employee to submit to a test for alcohol or drug use while on duty. The results may be used in a disciplinary hearing. Refusal to submit to the examination will be grounds for disciplinary action and may result in the employee's dismissal.

1. If the employee is believed to be under the influence of alcohol, a licensed intoxilyzer operator will administer the test. The Chief of Police or investigator will witness the test and will be required to sign the report.
2. If the employee has a reading of .01 or higher, or there is other competent evidence of impaired abilities to perform duties, the employee shall be relieved of duty by the Chief of Police or the supervisor.
3. If the employee is believed to be under the influence of self-administered drugs, they must be compelled to submit to a blood and/or urine test. The test shall conform to policy.
4. If the test shows positive results, or there is other competent evidence of impaired abilities to perform duties, the employee shall be relieved of duty as soon as possible by the Chief of Police or supervisor.
5. If an employee refuses to submit to a test, (alcohol or drugs) the Chief of Police or supervisor will immediately relieve the employee from duty for failure to cooperate in an administrative investigation.

B. Photograph and Lineup Identification Procedures:

Employees may be required to stand in a lineup for viewing for the purpose of identifying an employee accused of misconduct. Refusal to stand in a properly conducted lineup is grounds for disciplinary action and could result in dismissal.

1. A photograph of an agency employee may be maintained for the purpose of identification of an employee accused of misconduct. Photographs of employees will be required by the agency and will be used as it narrowly relates to the employees job.
2. Photographs or videotape pictures of employees, whether knowingly or unknowingly by the employee, may be taken for the purpose of internal investigations when it relates to the employees job and the employee is suspected of misconduct.

C. Financial Disclosure Statements:

Employees may be compelled to make financial disclosure statements when it is directly and narrowly related to allegations of misconduct involving any unlawful financial gain. Any evidence gained during the investigation of an administrative matter cannot be used in any criminal proceeding.

D. Polygraph:

The use of polygraph examinations in internal investigations shall be in accordance with agency policy or contractual agreements regarding its use.

1. Policy: All agency employees, effective with the promulgation of this policy, shall be required to submit to a polygraph when ordered to do so by the Chief of Police.
2. The Chief of Police may order an employee to take a polygraph when the employee is charged with a Category III offense.
3. The results of the polygraph examination will not be used as the sole basis for disciplinary action against any employee.
4. Any polygraph examination administered under the provisions of this policy and procedure shall be administered by a licensed examiner from another law enforcement agency. No agency employee shall be used to administer an examination to another agency employee.
5. Refusal to submit to a polygraph examination or to answer all questions pertaining to the charges in the polygraph examination shall be grounds for disciplinary action and may result in dismissal from the agency.
6. In order to comply with federal law, (privilege against self-incrimination) the following information must be provided to the employee asked to submit to such examination:
 - a) The nature of the inquiry, the name and rank of the investigating officer, and the name and rank of any person present during the examination.
 - b) That the answers will not be used to prosecute the employee.
 - c) That the employee may refuse to take the polygraph examination or to answer any questions, however such refusal shall be grounds for disciplinary action which may include dismissal.
 - d) That answers given during the polygraph examination do not constitute a waiver of the privilege against self-incrimination as it relates to criminal matters.
 - e) A polygraph Examination Acknowledgement of rights form must be initialed and signed in the spaces indicated (see appendix #2). Refusal to do so shall be grounds for disciplinary action which may result in dismissal.
7. The declaration is made to the intent of all of the above is that any employee who refuses to submit to a polygraph examination or refuses to answer any questions pertaining to the charges in such an examination may be terminated from employment.

VI. ADJUDICATION OF COMPLAINTS:

- A. The Chief of Police will classify completed internal affairs investigations as:
 - 1. Unfounded: No truth to allegations.
 - 2. Exonerated: Allegations true, but result of adherence to proper and appropriate procedures and techniques.
 - 3. Not sustained: Unable to verify the truth of the matters under investigation.
 - 4. Sustained: Allegations true.
 - 5. Completed investigations classified as unfounded, exonerated or not sustained will be maintained in internal affairs files in the Chief of Polices' office. Sustained complaints will be filed in the individual employee's agency personnel file with a copy in the internal affairs files.
- B. Disciplinary records: Category I offenses shall be purged two years after, if no further offenses in any category have occurred. Category II offense records shall be similarly purged after three years. Category III records are permanently retained.
- C. Disciplinary action taken may be determined by the seriousness of the violation or the extent of injury to the victim. It shall be commensurate with the circumstances surrounding the incident and in consideration of the employees' service record and prior sustained complaints. See Rules and Regulations 1-11 for details.

VII. DUE PROCESS:

- A. The Fourteenth Amendment to the Constitution provides that a citizen may not be deprived of "life, liberty, or property, without due process of law." Public employees have a limited property interest in continued employment sufficient to require due process in any administrative proceedings that might result in suspension or dismissal.
- B. The agency seeks to observe due process of law in the philosophy of the 14th Amendment in any disciplinary proceeding. Nevertheless, the foregoing rules circumscribe when legal counsel may or may not be used during interviews of employees suspected of misconduct.
- C. Despite employee's limited property interest in their job, as described in paragraph A, the simple fact that an employee has held a job for years does not entitle them to keep it.
- D. The agency recognizes that an employee, though dismissed or suspended, may have an interest to enjoy future employment elsewhere and, if suspended or dismissed, should have an opportunity to set forth the employees point of view. In view of this interest, the agency affords an employee a hearing in accordance with the provisions of the associated Town of Orono policy and/or union contract.

VIII. BOARD OF INQUIRY:

1. The Chief of Police may invoke a board of inquiry at any time for any disciplinary purpose. The board will serve to review facts or information to resolve an allegation of misconduct. A board will always be convened in the event of an employee shooting, involving the death or serious injury of any person subsequent to a law enforcement action.
 - a. A board of inquiry shall consist of at least three (3) people. The board may consist of, but is not limited to the following: the town manager, the internal affairs officer (unless involved in the incident under scrutiny), a law enforcement officer of the rank of sergeant or above from a nearby law enforcement agency or a Chief Law Enforcement Officer from another agency.
2. The board shall recommend a decision to the Chief of Police, or if the Chief of Police is involved in the incident, to the town manager.
3. The proceedings of the board of inquiry will not be recorded and transcribed, however, a board chairman shall be selected from among the board members who shall write in a memorandum to file, a summary of the proceedings, names of board members, and the board recommendations.

Appendix #1

HOW TO MAKE A COMPLAINT

1. If you wish to make a complaint about the actions of an employee or about any aspect of the Orono Police Department please:
 - a. Come to the agency and tell any employee that you want to make a complaint; or
 - b. Call the agency or the town manager's office and tell the person answering the phone that you want to make a complaint; or
 - c. Write your complaint and mail it to the Chief of Police.
 - d. Write your suggested resolutions.
2. A supervisory employee will assist you in filling out a report of complaint against law enforcement personnel form. This form asks you to identify yourself and then to give specific details about your complaint.
3. Your complaint will then be investigated. You may be contacted and asked additional questions about your complaint.
4. If the investigation of your complaint is going to take a long time, you will receive a letter telling you approximately when you may expect a reply.
5. When your complaint has been investigated, the Chief of Police will review the investigation and will write you a letter explaining what has been found out about the matter.

Citizen Complaint against a Police Officer or Employee

Name of Complainant: _____

Address: _____

Telephone #: _____ Email Address: _____

Date/Time of Alleged Incident: _____

Location of Alleged Incident: _____

Any Witnesses: _____

Name of Officer(s) Involved, if known by the complainant: _____

Please use the reverse side of this form to give details and why you are making this complaint against a member of the Orono Police Department. Additional sheets may be used if needed. Return this completed form to the Orono Police Department. An investigator will contact you in regarding the follow-up to this complaint.

**** Orono Police Use only ****

Officer Receiving Complaint: _____ Date Received: _____

Name & Rank of Officer Involved (If known): _____

Name of Investigating Officer: _____ Date Completed: _____

Findings: _____

Signature of the Chief of Police: _____ Date: _____

