POLICY & PROCEDURE

STURGEON BAY POLICE DEPARTMENT

SUBJECT: **CITIZEN COMPLAINTS/INTERNAL AFFAIRS**

SCOPE: All Department Personnel

DISTRIBUTION: Policy & Procedure Manual

REFERENCE: WI State Statutes: 19.34, 62.13(5), 66.0511(3), 946.66, Chapter 164
2021 WI Act 82, 995.55

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☐ RESCINDS

☐ AMENDS

WILEAG 5TH EDITION STANDARDS: 1.9.1, 1.9.2, 1.9.3, 1.9.4, 1.9.5, 1.9.6

INDEX AS: Citizen Complaints of Service
Complaints against Police
Disciplinary System
Internal Affairs
Internal Investigations

PURPOSE: The purpose of this Policy & Procedure is to promote the integrity of the Sturgeon Bay Police Department by establishing procedures that will assure the prompt and thorough investigation of alleged or suspected employee misconduct. Such procedures will document circumstances on the date of the initial report, exonerate the innocent, establish responsibility and accountability, and facilitate prompt and just disciplinary action if appropriate.

This Policy & Procedure consists of the following numbered sections:

I. POLICY

II. DEFINITIONS

III. RESPONSIBILITIES OF DEPARTMENT PERSONNEL

IV. CITIZEN COMPLAINT REPORT

V. COMPLAINT INVESTIGATION

VI. INVESTIGATIVE TOOLS AND RESOURCES

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I. POLICY

A. It is the policy of the Sturgeon Bay Police Department that all incidents of alleged or suspected violations of law, ordinances or Department rules, regulations or Policy & Procedures must be investigated and reported in writing. The incidents include those reported to any officer by:

1. Members of the Department, either orally or in writing;

2. Citizens (including prisoners) in person, by telephone, by correspondence, either signed or anonymous; and

3. Those violations observed or suspected by officers.

B. The Department encourages citizens to bring forward any legitimate complaint regarding misconduct by employees. It also recognizes that false complaints are occasionally made against the agency or its employees. Nevertheless, all complaints must be investigated to protect the integrity of the agency and its employees and to instill public confidence in the agency. In some cases, the extent of an investigation may be limited to substantiating the falsity of a complaint.

C. This policy ensures that WI State Statute 66.0511(3) is adhered to by the Department, which has a specific written procedure that is available for public scrutiny for processing and resolving a complaint by any person regarding the conduct of a law enforcement officer or other member employed by the Department.

II. DEFINITIONS

A. “Criminal investigation” means the process of investigation into alleged acts of misconduct that, if substantiated, may be the basis for filing criminal charges.

B. “Informal inquiry” means a meeting between supervisory personnel and an employee who has become the subject of a procedural or misconduct complaint for the purpose of mediating the complaint or discussing the facts to determine whether a formal investigation should be initiated.

C. “Internal affairs coordinator” means the Assistant Chief, who shall have the authority and responsibility of coordinating the internal affairs function.

This position will report directly to the Chief of Police for all matters relating to internal affairs. If an internal investigation involves the Internal Affairs Coordinator, the Chief of Police may designate an outside agency to investigate.

D. “Internal investigation” means the process of investigation into alleged acts of misconduct that, if substantiated, may be the basis for filing administrative charges.

E. “Minor misconduct complaint” means a complaint based on allegations of minor misconduct by employees of the Department. Examples of minor misconduct include, but are not limited to, rudeness or verbal abuse by an officer, traffic infractions by an officer, minor rules and regulations violations, etc.

A determinant of minor misconduct is that the alleged infraction, if substantiated, could result in disciplinary action ranging from a counseling session to a written reprimand.

F. “Procedural complaint” means a complaint based on employee actions that, if performed properly, would follow applicable legal guidelines and Department policies, e.g., complaints regarding towing of vehicles, parking, traffic enforcement, etc.

G. “Serious misconduct complaint” means a complaint based on allegations of serious misconduct by employees of the Department. Examples of serious misconduct include, but are not limited to, corruption, brutality, misuse of force, breach of civil rights, criminal conduct, or repeated acts of minor misconduct. A determinant of serious misconduct is that the alleged infraction, if substantiated, could result in disciplinary action up to and including suspension, dismissal and/or criminal charges.

III. RESPONSIBILITIES OF DEPARTMENT PERSONNEL

A. Employees shall courteously and promptly record a complaint against a member of the Department.

1. Employees receiving a complaint by phone will complete a citizen complaint report form and shall forward it to the appropriate person.

2. Complaints filed by mail or email shall be forwarded to the appropriate person.

3. Any person who requests to register a complaint in person shall either be provided with a Department Citizen Complaint Form that he/she can fill out or the employee taking the complaint may record the information from the requesting person on the form.

4. Any person requesting information regarding the process for filing a complaint shall be provided this information; generally, by a supervisor.

5. Any person requesting information or registering a complaint shall be notified of the prohibition of filing a false complaint per WI State Statute 946.66.

B. Employees may attempt to resolve the complaint, but shall never attempt to dissuade a citizen from lodging a complaint against a member of the Department.

C. Each employee shall perform their duties and assume the obligations of their rank in the investigation of complaints or allegations of misconduct against any member of the Department.

D. While an investigation is being conducted, all employees shall fully cooperate with the person conducting the investigation. Employees shall truthfully answer all questions which may be asked of them specifically directed and related to the scope of employment and operations of the Department.

E. Any employee who has, or is alleged to have, knowledge of facts or circumstances surrounding an internal investigation or informal inquiry shall submit a written report on the matter upon request by the person conducting such investigation or inquiry.

F. Responsibilities of Supervisory Personnel

1. When misconduct is observed or complaints of misconduct are received by a supervisor, that person shall immediately initiate a preliminary investigation into the matter in accordance with this Policy & Procedure.

    a) The supervisor shall also take any action that may be immediately required, e.g., take steps to prevent further misconduct from occurring.

2. Each supervising officer shall perform the duties and assume the obligations of their rank in the investigation of complaints against Department personnel. They shall continually examine all areas of law enforcement action under their purview in an effort to discover misconduct at its earliest stages.

3. Supervisors shall not look to higher authority to initiate investigations when subjects complained of are within the scope of their own authority and responsibility, except when the complexity of the case justifies assistance from the office of the Chief or designee.

4. For any investigation that proceeds beyond an informal inquiry, the investigating supervisor shall notify the Internal Affairs Coordinator as soon as practicable.

5. Supervisory personnel shall complete a thorough investigation when directed to do so by the Internal Affairs Coordinator.

6. Supervisory personnel shall complete a thorough investigation of procedural and minor misconduct complaints. Investigation results and/or the recommendations for discipline shall be forwarded to the Internal Affairs Coordinator. The Chief shall make the final determination of discipline.

7. Supervisors shall maintain the confidentiality and security of internal affairs investigations and records.

8. Upon completion of an investigation, the supervisor shall forward all records and reports to the Internal Affairs Coordinator, and shall make a recommendation regarding final disposition of the matter. The Internal Affairs Coordinator shall review the investigation and shall make a final recommendation to the Chief as to the resolution of the investigation.

G. Responsibilities of the Internal Affairs Coordinator

1. The Internal Affairs Coordinator shall be responsible for the coordination of all investigations regarding allegations of serious misconduct by Department employees, monitoring the investigation of procedural and minor misconduct complaints, and maintaining records of all complaints against the Department and its employees.

2. The Internal Affairs Coordinator shall maintain the confidentiality and security of internal investigations and internal affairs records. These records shall be kept in a secure file in the Internal Affairs Coordinator's office. These records shall be kept separate from other Department records, and access to them shall be strictly limited to the Chief and the Internal Affairs Coordinator.

3. The Internal Affairs Coordinator shall conduct investigations of alleged or suspected misconduct within the Department, assign the investigation to another supervisor or request another law enforcement agency to conduct the investigation. When assigned to another supervisor/agency, the Internal Affairs Coordinator shall supervise and control the investigation.

   a) The Internal Affairs Coordinator shall also consider whether the alleged misconduct should result in a criminal investigation. In the event a criminal investigation is deemed appropriate, an investigation shall be conducted by another investigator or, with the approval of the Chief of Police, the assistance of an outside investigative agency shall be utilized.

   b) The Internal Affairs Coordinator shall ensure that liaison is maintained with the District Attorney's Office in investigations involving alleged criminal conduct on the part of an employee.

4. The Internal Affairs Coordinator shall apprise the Chief of the existence, progress, and final outcome of each internal investigation.

5. In all cases involving a complaint of misconduct against the Chief, the management and authority for the investigation is with the City Administrator.

H. Responsibilities of the Chief of Police

1. The Chief of Police shall review recommendations for disciplinary action and shall take such action as deemed appropriate; refer to Policy & Procedure 4.02: Disciplinary Procedures.

2. Nothing in this policy diminishes the authority of the Chief to order suspensions, terminate temporary or probationary employees, or file charges with the Police and Fire Commission irrespective of recommendations made by subordinates.

3. If an internal investigation involves the Internal Affairs Coordinator, the Chief may designate an outside agency to investigate.

IV. CITIZEN COMPLAINT REPORT

A. Supervisors shall complete a citizen complaint report for each complaint against the Department or its employees, and shall forward copies to the Internal Affairs Coordinator. Each report taken shall be assigned a control number.

B. The Internal Affairs Coordinator shall use the citizen complaint report to determine further action regarding the complaint. In situations where the complaint can be immediately resolved through an informal inquiry, the report shall serve as the only record of the complaint.

C. The citizen complaint report shall include the following:

1. Name and contact information of the person making the complaint, if known.

2. Name of the employee(s) involved, if known, and the action, policy or procedure in question.

3. Date, time and location of the incident, and when the incident is being reported.

4. Specific details of the complaint, including any related incident numbers.

5. Supervisor’s actions taken, if any, upon receiving the complaint.

6. Receiving supervisor’s recommendations on subsequent actions, if any.

7. Final disposition (to be completed upon conclusion of the informal inquiry or internal investigation).

D. False reports of police misconduct.

1. Citizens found to have filed false reports of police misconduct may be arrested by the Internal Affairs Coordinator and referred to the District Attorney’s Office for charges under State Statute 946.66.

V. COMPLAINT INVESTIGATION

A. All complaints against the Department or its employees, including those received anonymously, will be courteously received and thoroughly investigated. A known complainant shall be notified of the receipt of their complaint and the complaint’s impending investigation.

B. During the preliminary investigation, the receiving supervisor shall determine whether the complaint is based on procedure, minor misconduct, or serious misconduct and whether the complaint would be best resolved through an informal inquiry, internal investigation, or criminal investigation.

C. Procedural and minor misconduct complaints will generally be handled through the chain of command. If the supervisor demonstrates a need to have such a matter handled by someone outside the normal chain of command, they may request the assistance of the Internal Affairs Coordinator.

1. These types of complaints may be addressed through either informal inquiry or internal investigation. Internal investigation shall be pursued if it appears that the allegations, if substantiated, could result in discipline greater than a letter of reprimand.

2. Upon completion of an investigation, the supervisor shall forward a copy of the citizen complaint report containing the final recommendation to the Internal Affairs Coordinator. This report shall be included in the investigative reports.

D. Serious misconduct complaints shall require notification of the Internal Affairs Coordinator as soon as such notification is practicable. Upon reviewing the complaint, the Internal Affairs Coordinator shall either conduct the internal investigation or assign the investigation to another supervisor. In the event a criminal investigation is deemed appropriate, an investigation shall be conducted by another investigator or, with the approval of the Chief, the assistance of an outside investigative agency shall be utilized. When assigned to another supervisor the Internal Affairs Coordinator shall supervise completion of the investigation.

E. Absent exceptional circumstances, e.g., the investigation of ongoing acts of misconduct, internal investigations shall be completed in a timely manner, or as soon as practicable from the receipt of the complaint.

F. Upon conclusion of an investigation, the Internal Affairs Coordinator shall make a recommendation to the Chief regarding final disposition of the matter.

G. At the Internal Affairs Coordinator's discretion, all investigated complaints shall be completed whether or not the complainant follows through with the investigation.

H. Upon conclusion of an investigation, the Internal Affairs Coordinator shall ensure that the complainant and the employee are advised in writing of the final outcome of the internal investigation. For lengthy investigations, an effort shall be made to communicate the status of the investigation to the complainant on a periodic basis.

VI. INVESTIGATIVE TOOLS AND RESOURCES

A. Medical and Laboratory Examination

1. Any supervisor may, based upon their observation, require a Department employee to submit to a test for alcohol or drug use while on duty, in accordance with the City's personnel policies.

2. Alcohol tests shall not be given arbitrarily. The basis for the test is a suspected violation of a law, rule, procedure or Policy & Procedure.

3. When ordered by the Chief of Police, employees shall be required to submit to any additional medical and laboratory examinations that are specifically directed and narrowly related to an internal investigation.

4. If at any time the investigator determines an investigation is likely to result in criminal charges being brought against an employee under investigation, the investigator shall confer with the City Attorney or the Department's legal advisor before proceeding under this section.

B. Release of Medical Records

1. In investigating all incidents involving injury, a supervisor shall obtain a signed release of the person's medical records.

C. Photograph and Lineup Identification Procedures

1. If ordered by the Chief, an employee shall submit to being photographed for the purpose of creating a photographic line-up when such a lineup is needed to identify an employee accused of misconduct.

2. If ordered by the Chief, an employee shall be required to stand in a line-up for the purpose of identifying an employee accused of misconduct.

D. Financial Disclosure Statements

1. If ordered by the Chief of Police, an employee shall be required to make financial disclosure statements when such statements are directly and narrowly related to an internal investigation.

E. Physical Evidence

1. Proper chain of evidence management and control shall be maintained for all physical evidence collected during an internal investigation.

F. Social Media

1. Employers who are conducting administrative or internal investigations related to performance, functionality or duties as a department employee are bound by State Statute 995.55 as it relates to social media. Employees may not request or require an employee or applicant for employment, as a condition of employment, to disclose access information for the personal Internet account of the employee or applicant or to otherwise grant access to or allow

observation of that account. Also refer to Policy & Procedure 1.15: Computer Procedures and Policy & Procedure 3.01: Recruitment and Selection.

2. An employee may volunteer access on their own to their private social media sites but cannot be required to do so.

3. Employers may view accounts that are open to and not restricted from public viewing.

4. Employers may request or require an employee to disclose access information to the employer in order for the employer to gain access to or operate an electronic communications device supplied or paid for in whole or in part by the employer.

VII. RIGHTS OF EMPLOYEES UNDER INVESTIGATION

A. When an employee is notified that they are the subject of an internal investigation, the employee shall be provided a written statement of the allegations and their rights and responsibilities related to the investigation.

B. The rights of an employee under investigation shall be determined by the nature of the investigation.

Rights associated with an administrative investigation shall differ from those associated with a criminal investigation. In a situation where the investigation may result in criminal charges being brought against an employee under investigation, the employee shall be afforded rights consistent with a criminal investigation.

1. Employee rights and procedural safeguards under WI State Statutes, Chapter 164: Law Enforcement Officer's Bill of Rights shall be adhered to.

   a) The law enforcement officer under investigation shall be informed of the nature of the investigation prior to any interrogation.

   b) At the request of any law enforcement officer under interrogation, he or she may be represented by a representative of his or her choice who, at the discretion of the officer, may be present at all times during the interrogation.

C. During an internal investigation an employee may be compelled to answer questions directly related to their official duties. Answers received in such a manner may not be used in a criminal proceeding involving the employee. Prior to any questioning, the employee shall be read the Internal Investigations Rights/Warnings Statements.

D. The following guidelines shall apply to an interview during an investigation for strictly administrative purposes:

1. The purpose of the investigation is to obtain information to determine whether disciplinary action is warranted. The answers obtained may be used in

disciplinary proceedings up to and including reprimand, demotion, suspension, or dismissal.

2. All questions asked of an employee under investigation that are specifically related to employment must be fully and truthfully answered. Refusal to answer may result in disciplinary action.

3. No reading of Miranda rights is required.

4. As determined by Garrity v. New Jersey, 385 U.S. 483, 87 S. Ct. 616 (1967), an employee has no Sixth Amendment right to counsel as the interview does not serve a criminal prosecution.

E. During a criminal investigation involving an employee, an investigator shall do the following prior to the interview with the accused employee, as applicable:

1. Advise the employee of his or her Miranda rights, including obtaining a written waiver of those rights, if the employee elects to do so.

2. Advise the employee that if he or she asserts their right not to answer questions, no adverse administrative action will be taken based upon such refusal, as the decision in Gardner v. Broderick, 392 U.S. 273, 88 S. Ct. 1913, 1916 (1968) indicates that a public employee may not be fired for asserting their Fifth Amendment privilege not to incriminate themselves.

a) If an employee elects to answer questions, their responses may be used in both criminal and administrative proceedings.

VIII. STATUS OF EMPLOYEES UNDER INVESTIGATION

A. When an allegation is substantiated or when an investigation is to be continued (not completed), the Chief of Police or the Chief's designee shall take one of the following actions in reference to the duty status of the accused employee:

1. Continue the employee on duty in their usual assignment.

2. Continue the employee on duty in some other assignment in which the employee's presence will not be objectionable to citizens involved in the incident, or where the employee may be kept under close supervision, such as in-station tasks.

3. When an accused employee is under the influence of alcoholic beverages, they shall be relieved from duty until further notice.

4. When an act complained of is a crime and the evidence is such that had the action been committed by a private person it would have resulted in their arrest, the supervisory officer shall explain the circumstances to the Chief of Police and request a decision whether:

a) The accused employee should be arrested forthwith; or

b) A warrant for the employee's arrest should be obtained; or

c) Criminal proceedings should be deferred pending further investigation.

5. When the alleged improper conduct of any employee is of such a nature that immediate or emergency disciplinary action is required, and it appears to be in the best interest of the City or the Department, the employee may be relieved from duty by a supervisor.

IX. COMPLAINT ADJUDICATION

A. The Internal Affairs Coordinator shall classify completed internal investigations of complaints using the following guidelines:

1. Unfounded: Investigation indicates that the allegations are false.

2. Not substantiated: Insufficient evidence has been obtained to either prove or disprove the allegations.

3. Substantiated: The allegations are supported by sufficient evidence to reasonably conclude that the allegations are true.

4. Exonerated: Investigation indicates that the incident occurred, but the employee's actions were justified, lawful or appropriate under the circumstances.

5. Policy failure: Investigation indicates that the allegations are true; however, the employee was acting in accordance with established Department policy.

B. All completed investigations shall be maintained in the Department's internal affairs files located in Captains office. In addition, per 2021 WI Act 82, effective November 8th, 2021, all disciplinary files that are classified as SUBSTANTIATED shall be included in each department member's employment file. Also refer to Policy & Procedure 2.07: Performance Evaluations.

X. ANNUAL REVIEW

A. At least once every year the Chief or designee shall review all citizen complaints/internal affairs reports to determine any patterns, policy issues, training, or disciplinary matters that require attention or any type of future action.

Clinton Henry
Chief of Police

This Policy & Procedure cancels and supersedes any and all written directives relative to the subject matter contained herein.

Initial 06/26/2020