

BENNINGTON POLICE DEPARTMENT

GENERAL ORDER

INTERNAL INVESTIGATIONS

Purpose:

The purpose of this policy is to ensure the integrity of the Bennington Police Department members by establishing an effective internal affairs program to ensure prompt and thorough investigation of alleged or suspected misconduct. Such procedures will:

1. Clear the innocent;
2. Provide early indicators of possible personnel issues;
3. Establish guilt of wrong doers;
4. Facilitate prompt and just disciplinary action;
5. Uncover defective procedures or material; and
6. Provide a mechanism for civilian review.

DATE: February 25, 2019
AMENDED: October 26, 2021

Subject: Internal Investigations
General Order # 19-01

To: All Personnel

By: _____
Paul J. Doucette, Chief of Police

Policy:

Based on the premise discipline is a function of command and a well-disciplined law enforcement agency is one which voluntarily and ungrudgingly conforms to policies and regulations, the Bennington Police Department will make every effort to facilitate the convenient, courteous, and prompt receipt and processing of complaints. Any member who interferes with, discourages or delays the making of such complaint(s) shall be subject to disciplinary action.

I. Responsibility

The Bennington Police Department will investigate all complaints against the agency or its personnel. Anonymous complaints can be difficult to investigate; however, the agency should carefully review each complaint for validation before disregarding it for lack of credibility. It shall be the responsibility of all department members to adhere to this policy.

II. Administration

- A. The Chief of Police or their designee is responsible for the internal investigation function of the Bennington Police Department. The Chief of Police or their designee will have the functional responsibility for internal investigations and shall report directly to the Chief of Police. Where the designee is a principle in an incident, the Chief of Police will oversee the investigation. Where the Chief of Police is the subject of an investigation, the complaint will be submitted to the Town Manager and the Vermont Criminal Justice Council.
- B. The internal investigation function is responsible for:
 - 1. Recording, registering, and controlling the investigation of complaints against members, or the agency itself;
 - 2. Supervising and controlling the investigation of alleged misconduct or corruption within the agency; and
 - 3. Maintaining the confidentiality of professional standards investigations and records.
- C. The internal investigations function shall not involve itself with the inadequacies of procedural matters, poorly written reports, matters of dress, or similar violations, except when such violations may be indicative or something more serious. Such concerns are the focus of supervisory staff.

Internal investigations are concerned with complaints or information received of personal abuse, domestic or relationship violence or abuse, stalking, sexual assault, other illegal actions, unethical and unprofessional conduct generally classified as follows:

1. Commission of any crime defined by Vermont statute or federal law as a felony or misdemeanor. Complaints shall be received by the Chief of Police or their designee. Complaints will be forwarded to the appropriate supervisor for investigation.
 2. The acceptance of gifts and gratuities, unprofessionalism or rudeness, favored treatment, or any activity or conduct which is prejudicial to the policy or rules and regulations of the Bennington Police Department. Complaints may be received by the Chief of Police or their designee. Complaints will be forwarded to the appropriate supervisor for investigation.
 3. In every instance, complaints will ultimately be reviewed by the Chief of Police or their designee. Once reviewed and a recommendation is made, the complaint will be forwarded to the Town Manager. Following review of the complaint, investigation and findings as well as the recommendation from the Chief of Police or their designee, the Chief of Police and Town Manager will determine appropriate action, if necessary. If an action is taken against an employee, the Chief of Police and/or Town Manager will take the action in accordance with the working agreement and/or Town of Bennington Personnel Manual.
 4. The Town Manager will forward the complaint, investigation, findings and any actions taken to the Chair of the Bennington Select Board. Members of the Bennington Select Board will act as the civilian review committee.
- D. When a member is notified, they are subject to an internal investigation, the Chief or their designee will issue the member a letter indicating the allegation(s). Article XX of the Working Agreement between the Town of Bennington and the New England Police Benevolent Association Local 419 addresses internal investigations and discipline.

III. Complaint Processing

A. Complaint Processing;

1. The Bennington Police Department will accept complaints of alleged or suspected violations of law, ordinances, department rules, regulations or policies. These include:

- a. Those violations reported to any member of the Bennington Police Department by other members of the Bennington Police Department, either orally or in writing; and
 - b. Citizens (*including arrested persons*) in person, by telephone, or by correspondence either signed or anonymous. When possible, a Citizen Complaint Form shall be completed.
2. Those violations observed or suspected by a supervisor;
- a. Any alleged or suspected breach of integrity or case of moral turpitude from whatever source it may be reported or developed;
 - b. Any situation in which a citizen has been injured or killed by an officer, whether on duty or not;
 - c. Any situation involving the discharge of firearms by an officer with the following exception(s):
 1. Unintentional discharge of a department owned weapon which does not involve death, injury or property damage.
 2. Euthanizing injured animals.
 3. Firearms Training or other legitimate firearms events.
 - d. Assisting any member of the Bennington Police Department by investigating cases of personal harassment, threats, false accusations, or continued situations, which may be harmful to the Bennington Police Department member.
 - e. Any time a citizen complaint or other investigation directed at a member requires the member to participate in a lineup, submit to a medical or laboratory examination, submit a financial disclosure, provide photographs for a lineup, or submit to a polygraph examination;
 - f. If the conduct alleged is of a criminal nature or may become criminal in nature, the Chief of Police or their designee may contact an outside law enforcement agency to conduct an independent investigation separate from the internal investigation.

- g. Citizen complaints will not be investigated if received more than 30 days after the alleged incident except if the complaint involves alleged criminal activity or the complainant can show worthy cause for not coming forward sooner.
- B. All complaints received in person or via telephone will follow the procedures as set forth in this policy. Exceptions are anonymous complaints where the Chief of Police or their designee will fill in the known information on the Citizen Complaint Form and forward as required.
 - 1. Persons who wish to file a formal complaint against any member of the Bennington Police Department shall immediately be directed to a supervisor or, if none available, an on duty member at the time the complainant appears. The supervisor or designated member will provide the complainant with their name, rank and other appropriate contact information for identification purposes.
 - 2. Members will treat a complainant courteously and with respect and civility, recognizing the difficult position people who file complaints against law enforcement may feel they are in. If an on duty member takes the initial complaint, they shall discuss the matter with no one other than a supervisor and preferably only the Chief of Police or their designee for internal complaints.
 - 3. Should the complainant, after speaking with the Supervisor or on duty member, and being advised of the complaint procedure, insist on filing their complaint personally with a higher authority, appropriate arrangements to refer the complainant to that higher authority shall be provided.
 - 4. Following a verbal discussion as to the substance of the complaint, the Supervisor or on duty member shall furnish the complainant with a blank copy of the Citizen Complaint Form. The Supervisor or their designee providing the form to the complainant must advise them they have 14 days to complete and return the form to continue the process. If the citizen has impediments to completing a written statement, the Supervisor shall offer to record the statement and/or write the statement on the complainant's behalf.
 - 5. The Supervisor or on duty member will complete the Citizen Complaint Form, noting the date and time the complaint was received from the complainant.

6. The Supervisor or on duty member will complete the Citizen Complaint Form and shall include a brief comment relative to the complainant's apparent rationality and demeanor. Should they suspect the complainant is under the influence of an intoxicant or drug, or is suffering from a psychological disorder, or evidence any other trait or condition bearing on the complainant's credibility, these conditions and descriptions shall be noted together with any other pertinent remarks. Should the complaint be received over the phone, the call should be recorded whenever possible.
 7. In those instances where a complainant has alleged the use of excessive force by a member, the Supervisor or on duty member taking the complaint shall carefully note the presence of any unusual marks, bruises or abrasions on the person or the complainant. They shall record all such injuries by the use of color photography or video and collect witness contact information whenever possible.
 8. After reviewing all available material pertaining to the complainant, the Supervisor or on duty member taking the complaint shall indicate the name of the member who is under investigation together with their rank and current assignment.
 9. The Citizen's Complaint Form shall be forwarded, either in person or by sealed envelope, to the Chief of Police or their designee if collected by another member.
 10. In cases alleging criminal conduct on the part of a member and after a decision by the Chief of Police or their designee to do so, the Chief of Police or their designee will advise the State's Attorney's Office, Vermont Attorney General's Office and/or any other appropriate Department/Agency of the nature of the complaint. The Chief of Police or their designee will maintain liaison with the State's Attorney's Office, Vermont Attorney General's Office and/or any other appropriate Department/Agency and may seek legal advice and assistance in case preparation.
- C. The Bennington Police Department shall maintain a record of all complaints. The records activity is a function of the internal investigations component and is an exception to personnel records to the extent the investigative work product will be filed separately and will be under the control of the Chief of Police or their designee.
1. To maintain confidentiality, records pertaining to internal investigations shall be properly secured by the Chief of Police.

- a. After a complainant has contacted the Bennington Police Department regarding an alleged violation, the Chief of Police or their designee will respond to the complainant, acknowledging the complaint has been received and is being investigated. This responsibility lies with the Chief of Police or their designee.
- b. Whenever practical and possible, the Chief of Police or their designee shall provide the complainant with periodic status reports pertaining to the progress of the investigation.
- c. At the completion of the investigation the Chief of Police or their designee will advise the complainant of the findings:

SUBSTANTIATED

The allegation/investigation is supported by sufficient evidence to justify a reasonable conclusion of a violation of law or department regulation(s).

NOT-SUBSTANTIATED

Insufficient evidence exists to either prove or disprove the allegation/investigation.

UNFOUNDED

All information firmly supports the allegation is false. The member involved is totally cleared/absolved of any misconduct.

EXONERATED

1. Proper Conduct - The incident occurred, but was lawful and proper. The member involved is totally exonerated of any misconduct.
2. Policy Failure - The incident occurred, but was lawful and proper in accordance with policy and procedure, however a review of such policies and/or additional training may be necessary to prevent future allegations of misconduct. The department member is totally exonerated of any misconduct.
3. Misconduct Not Based Upon the Complaint, Sustained - Substantiated misconduct not alleged in the complaint.

D. Compliance

1. Members who are subject to an internal investigation will not discuss the matter with any individuals except the assigned investigator(s) and supervisors who have a direct involvement in the inquiry process.
2. Any member who is aware of an internal issue and possesses relevant information to that inquiry is required to bring it to the attention of their supervisor or the assigned investigator(s). A failure to do so, even if not specifically asked for, may result in significant disciplinary action.
3. Matters subject to an internal investigation shall only be discussed with subject members, witnesses, and supervisors with an authorized involvement in such matters.
4. All information, documents, recordings, and other material relevant to an internal investigation shall be considered confidential and privileged. The assigned investigator(s) shall take all reasonable and necessary precautions to maintain the confidentiality of such items and ensure that it's provided only to supervisors within the chain of command who have a direct and authorized involvement in the internal investigation process.

IV. Operational

- A. The Bennington Police Department shall maintain liaison with the State's Attorney's Office, Vermont Attorney General's Office or other appropriate Agency/Department in investigations involving alleged criminal conduct on the part of a member. No action may be taken by members conducting such an inquiry that in any way interferes with or compromises a criminal investigation.
- B. Supervisors have a responsibility to discover inefficiency or misconduct at its earliest stages and should not rely on a higher authority in the organization when issues are within the scope of their own authority.
- C. The Chief of Police or their designee shall notify the involved member of a citizen complaint and/or internal investigation unless such notification could compromise the investigation. At the time of the notification, the member shall receive in writing a statement of the allegation(s). When it is determined the notification should be made, it must be determined whether the member will receive Miranda warning or Garrity warning.

1. When a member is advised of a Garrity warning, the member is required to answer all questions fully and truthfully, and disciplinary action, including dismissal, may be imposed for a refusal to answer.
 2. In cases where the Bennington Police Department desires to have the option of using any statements made by the member in a subsequent criminal proceeding, then:
 - a. The member must be advised of their Miranda warning;
 - b. The member must be advised no adverse disciplinary or administrative action will be taken based upon a refusal to answer any questions;
 - c. In any case where the option to use incriminating statements must be retained, the investigating authority shall have the member complete a Miranda warning.
 - d. Voluntary statements or confessions made by an employee while being questioned would be admissible in criminal proceedings.
- D. No member shall become involved in an investigation in any manner unless expressly requested to do so by the Chief of Police or their designee.

V. Disciplinary Authority

- A. The Chief of Police or their designee may impose an emergency suspension against a member when there are indications that the member has been consuming alcohol and/or is under the influence of drugs. An emergency suspension under their authority would be considered a temporary administrative action due to a member's physical or psychological fitness for duty.

NOTE: Any person so suspended shall be instructed to report to the Chief of Police or their designee as soon as reasonably practicable, unless circumstances dictate a different course of action. The supervisory member imposing or recommending the emergency suspension will report at the same time.

- B. The Chief of Police or their designee may recommend the following disciplinary measures:
1. Oral reprimand;
 2. Written reprimand;
 3. Suspension;
 4. Discharge;
 5. Demotion; and
 6. Written recommendations for other penalties.

Final authority and responsibility for discipline rests with the Chief of Police or the Town Manager. The Chief of Police or their designee retains the prerogative and right to sanction or withhold any disciplinary action until such time as any appeal has been concluded.

VI. Special Tests

- A. An on-duty supervisor is required to direct a member to submit to an evidentiary breath test when the level of inebriation is a factor directly related to duty performance or to operating a departmental vehicle.
1. An accused employee may request a breath test or polygraph test if they believe such a test would be beneficial to their defense.
- B. At the direction of the Chief of Police or their designee, and the expense of the agency, members may be required to submit to tests or disclosures when it is specifically directed and narrowly related to an internal affairs investigation regarding the member. Failure to follow a direct order of this nature may result in a separate disciplinary action against the member.
- C. Examples of specific requests that may be made of members during an investigation include, but are not limited to the following:
1. Polygraph examinations;
 2. Medical, psychiatric, or laboratory examinations, including chemical tests;
 3. Photographs;
 4. In-person line-up;

5. Submission of financial disclosure or other personal papers;
6. Search of equipment, locker or storage area used by the employee regarding the performance of their official duties.

VII. Interview Rights

- A. All interviews will be conducted while the member is on duty, unless the seriousness of the investigation is of such a degree an immediate interview is required.
- B. The accused member being interviewed shall not be subjected to offensive language or threatened with transfer, dismissal or disciplinary action. No promise or reward shall be made as an inducement to answer any questions.
- C. Members will be afforded an opportunity for appropriate representation relative to the complaint made prior to being interviewed. Agreement by and between the Town of Bennington and the New England Police Benevolent Association, Local 419.

VIII. Investigating Member's Responsibilities

- A. Consistent with existing departmental policy, the investigating member assigned to a complaint is authorized to employ all recognized investigative methods in conducting a meaningful investigation of a complaint filed against a member of the Bennington Police Department.
- B. The impact of an internal investigation on the integrity of the Bennington Police Department and on employee morale necessitates a speedy resolution to such issues. The investigating member is responsible for the completion of an assigned investigation within seven (7) days of said assignment. Status reports are required within three (3) days. There may be exceptions to the three (3) day limit, but such extensions may only be granted in cases where extenuating circumstances exist.
- C. The Chief of Police or their designee will complete a report when the investigation is completed. The investigator will conclude their report with one of the following categories:

SUBSTANTIATED

The allegation/investigation is supported by sufficient evidence to justify a reasonable conclusion of a violation of law or department regulations.

NOT-SUBSTANTIATED

Insufficient evidence exists to either to prove or disprove the allegation.

UNFOUNDED

All information firmly supports the allegation is false. The department member involved is totally cleared/absolved of any misconduct.

EXONERATED

Proper Conduct - The incident occurred, but was lawful and proper. The department member involved is totally exonerated of any misconduct.

Policy Failure - The incident occurred, but was lawful and proper in accordance with department policy and procedure; however, a review of such policies and/or additional training may be necessary to prevent future allegations of misconduct. The department member is totally exonerated of any misconduct.

MISCONDUCT NOT BASED UPON THE COMPLAINT, SUSTAINED –
Substantiated misconduct not alleged in the complaint.

- D. When the act complained of is a crime and the evidence is such that had the action been by a private person would have resulted in arrest, the investigating member will explain the circumstances to the Chief of Police or their designee and request a decision as to whether:
1. The accused member should be arrested forthwith; or
 2. A warrant for arrest should be applied for; or
 3. Whether criminal action should be delayed pending further investigation and consultation with the State's Attorney's Office and/or Attorney General's Office.
- E. The final investigative report will be forwarded to Chief of Police or their designee, along with any recommendations for alternate action, made in writing.

IX. Review and Disposition by the Chief of Police or their designee.

- A. After due consideration of all information pertaining to the complaint and investigation, including recommendations by the investigating member, the Chief of Police or their designee shall decide upon the disposition of the complaint.
- B. The Chief of Police or their designee will notify the investigated member and other appropriate persons the final adjudication and disposition.
- C. The Chief of Police or their designee will notify the complainant of the final determination of the complaint.

X. Records

- A. All records pertaining to citizen complaints and internal investigations shall be maintained in a secure file.
- B. The Chief of Police or their designee shall prepare an annual summary of internal investigations at the end of each calendar year and forwarded to the Town Manager. The report shall be statistical in nature and shall not identify any member by name. The summary report shall contain information relating to:
 - 1. The number of investigations;
 - 2. The adjudication of those investigations;
 - 3. Disciplinary action;
 - 4. Any other pertinent information.

XI. Search of agency owned storage, vehicles and workspaces

- A. A member's assigned lockers, vehicles, workspaces, storage file drawers, etc. is the property of the Bennington Police Department, and as such, no grant of property right or privacy is expressed or implied. All agency owned lockers, vehicles, workspaces, storage areas, file drawers, etc. are the property of the Bennington Police Department whether assigned or non-assigned and may be subject to search.
- B. Except in exigent circumstances, only the Chief of Police or their designee may authorize a search of an individual employee's assigned locker, vehicle, workspace, storage areas, file drawers, etc.

- C. During any authorized search, at least one supervisory member shall be present, along with the investigating member and the employee who has been assigned or is using that locker, vehicle, workspace, storage area, file drawers, etc., if possible.

XII. Policy Failure

- A. When adjudicating a complaint, it may be found a citizen has a valid and justifiable grievance, but the member involved acted properly within the prescribed policy.
- B. In such cases, the investigating member shall recommend the appropriate adjudication as it relates to the employee and prepare, in conjunction with the Chief of Police or their designee an additional section to the narrative report entitled "Policy Failure."
- C. The investigator's report shall specify:
 - 1. The specific policy involved.
 - 2. The harm done to the complainant or the problem that it caused.
 - 3. Any recommended changes to the existing policy to prevent future problems of the same nature.
- D. If the Chief of Police or their designee concurs with the investigator's conclusions regarding the policy failure, they shall assign a person to be responsible for preparing the appropriate policy change.



**BENNINGTON POLICE DEPARTMENT
CITIZEN'S COMPLAINT FORM**

INCIDENT:

INCIDENT NUMBER (If Applicable) _____

DATE: _____ TIME: _____

INCIDENT LOCATION: _____

OFFICER(S)/EMPLOYEE(S) INVOLVED: _____

SUPERVISOR RECEIVING COMPLAINT _____

WITNESSES / OTHERS INVOLVED:

NAME: _____ CONTACT INFO: _____

NAME: _____ CONTACT INFO: _____

NAME: _____ CONTACT INFO: _____

SPECIFIC TYPE OF ALLEGATION(S): (Describe the incident in detail on attached pages)

- | | |
|--|--|
| <input type="checkbox"/> Unprofessional Conduct | <input type="checkbox"/> Discrimination |
| <input type="checkbox"/> False Detention or Arrest | <input type="checkbox"/> Unreasonable Use of Force |
| <input type="checkbox"/> Dishonesty | <input type="checkbox"/> Property Damage or Loss |
| <input type="checkbox"/> Other (Describe) | |

CONTACT INFORMATION

NAME (Print): _____ TELEPHONE: _____

MAILING ADDRESS: _____

With my signature I hereby certify that my description of this incident as submitted is true, accurate and complete. I understand I am submitting a formal complaint and I agree to be interviewed and to cooperate with Bennington Police personnel assigned to investigate this report.

SIGNED: _____ DATE: _____

