

San Diego Sheriff's Department



Internal Affairs Manual

San Diego County Sheriff's Department
Manual for the Administration of Complaints,
Discipline and Appeals

July 2020



SAN DIEGO COUNTY SHERIFF'S DEPARTMENT
INTERNAL AFFAIRS PROCEDURES MANUAL

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1.1 MISSION STATEMENT

To enhance the confidence of the public and our Department employees, we provide thorough and impartial administrative investigative services.

2.1 RESPONSIBILITY/CHAIN OF COMMAND

The Internal Affairs Unit was established as an independent unit that, for routine business purposes, reports to the Sheriff through a chain of command consisting of:

- Lieutenant – Internal Affairs Commander
- Commander - HRSB
- Assistant Sheriff – HRSB
- Undersheriff

Some issues may require personnel assigned to Internal Affairs to bypass one or more levels in the chain of command.

2.2 NOTIFICATIONS TO COMMAND STAFF

To insure that top management personnel within the Department are kept apprised of information received by the Internal Affairs Unit, notifications will be made based upon the following criteria:

- Assistant Sheriffs / Commanders

Assistant Sheriffs / Commanders shall be notified in writing of all complaints received by Internal Affairs regarding personnel in their respective bureaus. This includes complaints to be investigated by Internal Affairs, as well as complaints that will be investigated by the command. The only exception to this will be at the direction of the Undersheriff or Sheriff.

- Assistant Sheriff / Commander, Human Resource Services Bureau

The Assistant Sheriff and Commander will be briefed regarding complaints received by Internal Affairs which, by their nature, may have an immediate impact upon the image or operation of the Department. This is primarily directed at, but not limited to, complaints that allege criminal conduct by members of the Department, or which may draw attention from the media.

- Undersheriff

The Assistant Sheriff will brief the Undersheriff on incidents deemed appropriate for his or her immediate knowledge.

- Sheriff

In most cases the Undersheriff will brief the Sheriff on investigations and complaints being handled by the Internal Affairs Unit.

2.3 FILES

Internal Affairs Files

All files maintained by Internal Affairs are confidential and consist of the following:

- *Discipline Files* are maintained under the employee's name and contain all formal discipline written reprimand or above.
- *Investigative Files* contain the entire investigation, regardless of disposition.
- *Traffic Accident Files* contain all investigations for chargeable collisions.
- *Discovery Files (Pitchess Motions)* contain documents (subpoena duces tecum, discovery motion, etc.) filed on behalf of defendants and plaintiffs in an effort to gain access to personnel records. The file will contain a list of items reviewed by the court and what, if anything, was released.
- *Complaint Correspondence Files* are maintained for the purpose of retaining correspondence which does not require, or justify, an Internal Affairs investigation.

Purging Files

- *Discipline Files* are retained for the duration of the employee's career. The County Records Destruction Act permits destruction of discipline records two years after the employee terminates employment with the Department.

- *Investigative Files* are retained for a period of five years unless there is pending litigation.
- *Traffic Accident Files* for chargeable accidents are retained for a period of five years unless there is pending litigation. All non-chargeable accidents are retained by the Traffic Coordinator.
- *Discovery Files* are retained for one year unless there is pending litigation.
- *Complaint Correspondence Files* are retained for a period of five years.

Access to Internal Affairs files is limited to the following:

- Sheriff: Any file on request.
- Undersheriff: Any file on request.
- Assistant Sheriffs: Any file on request.
- Commanders: Any file on request.
- Sheriff's Legal Advisors: Any file on request
- Internal Affairs: Any file.
- Employee: With prior appointment may review his/her own discipline file; complaint forms, regardless of disposition; traffic accident files; and discovery file.
- Other departmental personnel: Access only on direction of the Sheriff, Undersheriff, an Assistant Sheriff, or Commander.
- County Counsel / Claims Investigator: Any file where access is requested because of ongoing litigation and County Counsel is representing the Department.
- District Attorney / Attorney General: Access to an individual's file where the request is based upon an ongoing investigation that is related to the individual's performance of his/her official duties. Any other access requires a court order (See 832.7 P.C.).
- Grand Jury: Same as District Attorney (See 832.7 P.C.).

- Potential employers: With a signed waiver from the individual seeking employment, potential employers may review all personnel files.

Release of Internal Affairs Documents

The following persons may obtain copies of documents from Internal Affairs:

- Sheriff
- Undersheriff
- Sheriff's Legal Advisors
- County Counsel
- Accused Employees will be provided with copies of all documents pertinent to proposed discipline.

All others requesting the release of documents from Internal Affairs must have approval of the Sheriff, Undersheriff, or a court order.

2.4 COMPLAINTS

Administration

The Internal Affairs Unit is responsible for the administration of all formal complaints which includes:

- Review the complaint for classification and assignment.
- Review of the completed investigations.
- Filing of completed investigations.
- Maintain an index of all complaints.

Reasons for not immediately investigating a complaint may include:

- Pending criminal case which would conflict with the investigation.
- Inmate grievance procedure not followed.
- Frivolous complaint (per 832.5 PC) or no nexus to employment.

- No policy or law violation.

Receiving complaints

Refer to Department Procedure 3.2.

Penal Code section 148.6(a)(1) provides that any person who files an allegation of misconduct against a peace officer, knowing the allegation to be false, is guilty of a misdemeanor. Although the California Supreme Court, in *People v. Stanistreet* (2002) 29 Cal.4th 497, held that section 148.6(a)(1) is constitutional, the Ninth Circuit Court of Appeals, in *Chaker v. Crogan* (2004) 428 F.3d 1215, found section 148.6(a)(1) unconstitutional and set aside the defendant's conviction for making a false allegation of misconduct against a peace officer. Notwithstanding the fact that Penal Code section 148.6(a)(2) requires the Department to advise complainants that it is against the law to knowingly make a false complaint and that the complainant may be prosecuted on a misdemeanor charge, it is the position of the Department that it will *not* cite, arrest nor seek prosecution of any complainant for an alleged violation of section 148.6(a)(1).

Notification to Complainant

Except in cases involving a complaint documenting an inmate grievance, inmate request, or any other inmate narrative that does not allege employee misconduct, the Internal Affairs Unit will notify the complainant in writing that their complaint has been received and if the allegations will be investigated. Details of any such investigation will not be discussed with the complainant. In accordance with Penal Code section 832.7, within thirty (30) days of the conclusion of an investigation, the Internal Affairs Unit will notify the complainant, in writing, of the disposition.

Complaints documenting an inmate grievance, inmate request, or any other inmate narrative that does not allege employee misconduct will be referred to the Detention Services Bureau for processing and disposition in accordance with applicable Detention Services Bureau policies and procedures. Upon receipt of such a complaint, the Detention Services Bureau will notify the complainant that the complaint documenting an inmate grievance, inmate request, or other inmate narrative was referred to the Detention Services Bureau for processing and disposition.

Notification of Accused

It is the responsibility of the Internal Affairs Unit to notify the accused employee prior to their interview they are under investigation. The written notification will specify who the complainant is, the alleged misconduct, and the rights and responsibilities of the accused. At the completion of an investigation, the accused employee will be notified in writing of the disposition of the complaint.

Personnel Complaints

A personnel complaint is defined as an allegation of misconduct, brought by any source, against any member of this Department. They are divided into two categories:

- *Serious Complaints* may constitute either a crime or a serious rule violation. Serious complaints will be identified by a “.1” following the case number. Examples include:
 - Physical abuse (such as excessive or unnecessary force)
 - Conformance to laws
 - Discrimination against any person (includes language or conduct intended to disadvantage, embarrass, demean, or intimidate any person based on race, religion, gender, etc.)
 - Untruthfulness (verbal or written)
 - False arrest/search and seizure (where act is intentional/deliberate)
 - Sexual Harassment
- *Minor Complaints* constitute a minor rule violation of the basic “working rules” of the Department. Minor complaints are identified by “.2” following the case number. Examples include:
 - Simple discourtesy
 - Procedural complaints

Stale Complaints

It shall be the policy of this Department not to investigate those complaints, of a minor nature, which are received thirty (30) days or more after the date of the alleged incident. If a complaint of this nature is received in writing, it shall be the responsibility of Internal Affairs to respond to the complainant.

Should a stale complaint be received verbally, the receiving party should explain our policy to the complainant. When in doubt, accept the complaint and forward it to Internal Affairs.

Anonymous Complaints

Anonymous complaints of a serious nature will be handled in the same manner as any other complaint, however, the complainant should be advised the investigation may be hampered by the inability to re-contact them for further information. Any information as to why the complainant wishes to remain anonymous should be noted on the complaint form.

Anonymous complaints of a minor nature will be referred to the accused employee's supervisor to be handled as a supervisory matter.

Third Party Complaints

Third party complaints of a minor nature will be handled by the accused employee's supervisor as a supervisory matter. If the circumstances require a formal investigation, the supervisor should provide or complete a complaint form. Third party complaints of a serious nature will be handled in the same manner as any other complaint.

Anonymous or third party complaints received by mail shall be forwarded to Internal Affairs for processing.

Department Originated Complaints

Department originated complaints can come from a variety of sources including: CLERB, CIRB, County Claims, the employee's command, or any supervisor.

When completing the form, the complainant's name will be listed as "S.D.S.O." The narrative section should include a brief description of the alleged misconduct. The complaint form should not be signed as the signature block is only necessary for members of the public. The originator of the complaint should be identified on any supporting documentation.

Unusual Circumstances

Immediately contact the Internal Affairs Lieutenant when the circumstances are of such an urgent and serious nature that immediate action is necessary.

Emergency Referrals

When information is received by any department member that an emergency exists where the safety of employees or the public is in jeopardy due to an employee's misconduct, the receiving employee shall immediately notify their supervisor. The supervisor shall take direct action to protect those jeopardized and notify Internal Affairs without delay.

Once the emergency circumstances are resolved, the complaint will be handled as any other complaint by Internal Affairs.

Potential Criminal Conduct

See Department Procedure 3.3

Administrative Assignment

See Department Procedure 3.3

Suspension of Peace Officer Powers

If such a decision is made to suspend an employee's peace officer powers, it shall be carried out by the Internal Affairs Unit following the same procedures set forth in Section 3.34 of the Department Procedure Manual. There is no appeal or review of the restrictions.

Reserves

The following procedure will apply only to complaints against reserve personnel. Personnel files for reserves are subject to discovery motions (*Pitchess*).

Any member of this department who receives a complaint regarding the conduct of reserve personnel shall initially process the complaint as outlined in section 2.4 of this manual. The Internal Affairs Lieutenant will review the complaint and assign it for investigation.

Those complaints assigned to the command for investigation will be forwarded to the station to which the reserve is assigned. The investigator shall complete the investigation and forward it to the Internal Affairs Unit via the investigator's chain of command.

The Reserve Coordinator Lieutenant will review the investigation and recommend discipline where applicable. The discipline will then be processed through the Emergency Services chain of command.

Other Employees

960 hour Rehires, student workers, interns, contract professionals and volunteers are considered "at will" and "unprotected." Complaints against these employees will be evaluated by their command.

Contract professionals are not Sheriff's Department employees. Complaints, other than sexual harassment, will be forwarded to the Human Resources Manager.

Claims of sexual harassment for any of the above employees will be investigated.

2.5 INVESTIGATION

The Internal Affairs Unit has the primary responsibility for the investigation of all complaints. The Internal Affairs Lieutenant will make the determination where the complaint will be investigated.

Assigning the investigation

Internal Affairs Unit will typically investigate:

- Complaints alleging criminal or serious misconduct
- Complaints alleging misconduct by officers holding the rank of Lieutenant or above
- Complaints that could be compromised by a conflict of interest, supervisory bias, media exposure, or a belief by the community that an impartial investigation will not be conducted.
- Any complaint assigned to the Internal Affairs Unit by the Sheriff, Undersheriff, or an Assistant Sheriff.

Command will typically investigate:

- Complaints classified as minor.
- Majority of complaints classified as procedural.
- Other complaints as determined by the Internal Affairs Unit.

Responsibility and Time Limits

When a supervisor or Internal Affairs investigator is assigned an investigation it will be his or her responsibility to ensure the complainant and all witnesses are interviewed, relevant reports are included, and the investigation is completed in a timely manner.

For investigations assigned to the command, the investigation should be completed within forty-five (45) days from the day the case is assigned. Extensions to the forty-five (45) day time limit may be granted by bureau commanders.

Investigative Interviews

When conducting interviews of accused, sworn employees of the rank Lieutenant or greater, at least one of the investigating officers will be of a rank greater than the accused, sworn employee.

When conducting interviews of accused employees, the investigating officer will always comply with the following guidelines:

Peace Officers Bill of Rights, Government Code Sections 3300-3312

- You must conduct the interrogation at a reasonable hour, preferably when the employee is on duty or during the employee's normal waking hours, unless the seriousness of the investigation requires otherwise.
- You must compensate the employee for time spent in the interrogation if the interrogation is not conducted during the employee's normal working hours.
- You must inform the employee of the rank, name and command of the officer in charge of the interrogation, the interrogating officers and other persons to be present during the interrogation.
- All questions directed to the employee shall be asked by and through no more than two interrogators at one time.
- You must inform the employee of the nature of the investigation prior to any interrogation.
- You must allow the employee to attend to his/her own personal physical needs.
- You must provide an accused employee access to any recording made of an interrogation prior to any subsequent interrogation.
- You must advise the employee of his or her Constitutional rights (*Miranda* Rights) as soon as it appears that he or she may be charged with a criminal offense.
- You may inform the employee that failure to answer questions directly related to the investigation may result in punitive action.
- You may record the entire interrogation.
- The accused employee may record the entire interrogation.

- The accused employee may be represented by one person of his or her choice who may be present during the entire interrogation. However, the representative may not be a person who is subject to the same investigation. The representative cannot be required to disclose any information obtained from the employee in non-criminal matters.
- You may order the employee to cooperate in a criminal investigation being conducted by another agency. Generally speaking, an employee may be ordered to appear for an interview by another agency, but cannot be compelled to answer the other agency's questions.
- You may search the officer's locker, desk, county vehicle, or other space used for storage owned or leased by the County, in the officer's presence, with the officer's consent, pursuant to a search warrant, or where the officer has been notified in advance that a search will be conducted.
- You cannot use offensive language.
- You cannot use threats of punitive action other than informing the employee that failure to answer questions related to the investigation may result in disciplinary action up to and including termination.
- You cannot promise any rewards.
- You cannot subject the employee to news media visits without the employee's consent.
- No public safety officer shall be loaned or temporarily reassigned to a location or duty assignment if a sworn member of this Department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances.
- You cannot penalize the employee for asserting his or her rights.
- You cannot compel or order an officer to submit to a polygraph examination, and no reference regarding an officer's refusal may be made in any reports.
- You cannot make adverse entries in the employee's personnel file without allowing the employee to read and sign the document. If the employee refuses, such refusal shall be noted and initialed by him/her and then filed.
- The employee may file a written response to any adverse entry which is to be placed in his or her personnel file, within 30 days, which shall permanently accompany the adverse entry.

- The employee may obtain injunctive relief, including temporary restraining orders, from the Superior Court for violation of the rights enumerated in Government Code 3300, et seq.

Professional Staff

Professional Staff personnel are not afforded the same statutory rights as sworn personnel. However, supervisors conducting interviews of accused professional staff shall adhere to the rights afforded to sworn employees.

Special Considerations

It is essential that all supervisors conducting interviews of employees regarding potential disciplinary matters be familiar with the requirements of:

- Peace Officers Bill of Rights Act (Government Code §§ 3300-3312)
- *Lybarger Warning* (*Lybarger v. City of Los Angeles* (1985) 40 Cal.3d 822)
 - Upon initiation of an interrogation of an employee when it appears the employee may be charged with a criminal offense as a result of the employee's misconduct, or the employee refuses to answer questions on the ground that the answers may be self-incriminating, the questioning shall be preceded by a "*Lybarger*" warning. (Note: This rule is consistent with constitutional law, see e.g. *Garrity v. State of New Jersey* (1967) 385 U.S. 493).

Report Format

The Internal Affairs format is mandatory for complaint investigations. The current approved templates may be found on the Internal Affairs SharePoint website under the "[Sample Case Templates](#)" button.

The Findings portion of the report shall contain a disposition based upon the facts revealed by the investigation. For multiple accused, each employee's findings must be on a separate page. The findings shall be expressed in one of the following five categories:

- **SUSTAINED:** A true finding supported by facts.
- **NOT SUSTAINED:** Facts revealed do not substantiate the allegation; insufficient evidence available.
- **UNFOUNDED:** Not true. Actions alleged did not occur.
- **EXONERATED:** Allegation is true but actions were lawful or within policy.

- **RESOLVED:** No other method available to close case. (Examples: Unable to locate complainant, employee has separated from employment, etc.)

Review of Investigations by Command / Internal Affairs

Investigations conducted by the command will be reviewed by the command, up to the accused employee's third level supervisor for thoroughness and consistency. Investigations conducted by Internal Affairs will be returned to the command for review and appropriate recommendations.

Disciplinary recommendations will be made by the accused employee's second level supervisor and approved by the third level supervisor.

It is the responsibility of the Internal Affairs Unit to review all complaint investigations to ensure that a thorough investigation has been conducted, and that the findings are consistent with the facts.

Criminal Investigations

When any member of this Department receives information that an employee has committed a criminal act or is taken into custody, they shall immediately notify the Internal Affairs Lieutenant.

When an employee is arrested, they shall immediately inform their immediate supervisor. The Supervisor receiving such notification shall immediately notify the Internal Affairs Lieutenant.

For the purpose of this section, criminal matters are serious rule violations resulting from an illegal activity (i.e., all felony crimes and misdemeanors such as drunk driving, battery, etc.) Routine traffic violations which do not affect the employee's work are not included in this section unless they result in a loss of driving privileges.

In criminal cases investigated by another agency, Internal Affairs will collect all relevant reports and act as a liaison.

Criminal complaints investigated by the Sheriff's Department will be assigned to the appropriate investigative unit. If the investigation results in the possibility of criminal prosecution, it will be submitted to the District Attorney's Special Operations Unit for review. If the case is not prosecuted, the District Attorney will return the case to the Internal Affairs Unit for potential administrative investigation. The District Attorney's decision not to prosecute does not necessarily indicate there were no violations of law or Department policy. The Internal Affairs Lieutenant will determine if an administrative investigation is appropriate.

If the District Attorney's Office seeks prosecution, the Department may proceed with one of two possible courses of action. The Department may elect to initiate an Internal Affairs

investigation immediately, or the Department may wait until the conclusion of the District Attorney's prosecution of the employee. In the event that emergency circumstances exist in which the immediate removal of an employee is essential to avert harm to the County or to the public, the procedures set forth in Civil Service Rule 7.2.1 shall be followed.

3.1 RECOMMENDATIONS FOR DISCIPLINE

Disciplinary Procedures

See Department Procedure 3.3

Informal Discipline

Verbal and written counseling are the most widely used methods of informal discipline and can be the first steps in a progression of discipline. Counseling should be characterized by:

- A clear statement of the unacceptable aspects of employee job performance or conduct.
- A tone of inquiry rather than accusation.
- Opportunity by the employee for explanation, presentation of mitigating circumstances, etc.
- A re-statement of expected standards of job performance and conduct.
- Confidentiality and privacy with respect to location and subject of discussion.

Discipline Review

The disciplinary process for the Department is structured to allow input from all levels in the chain of command. The second level supervisor of the employee will make the initial recommendation for discipline. It is then the responsibility of each level in the chain of command to review the recommended discipline and either concur or make an alternate recommendation.

Progressive Discipline

Effective discipline is important in any successful organization. Discipline is imposed to correct behavior. Progressive discipline is characterized by the following:

- Addressing a performance or conduct problem with a form of discipline appropriate to the offense.

- Addressing repeated violations with increased forms of discipline

The County of San Diego generally recognizes the following as discipline listed in a progressive order of magnitude:

- Verbal Counseling
- Written warning (Professional Staff Only)
- Written Reprimand
- Transfer to another position in the same class
- Suspension without pay or reduction in pay in lieu of suspension
- Demotion (Reduction in rank or pay)
- Termination

The disciplinary recommendation is detailed in Department Procedure Section 3.3.

3.2 IMPLEMENTATION OF DISCIPLINE

Formal discipline becomes effective only after the final authority has reviewed and approved the discipline. For written reprimands the final authority is the third level supervisor. For all other formal discipline the final authority is the Sheriff. After approval, the documents are returned to Internal Affairs for processing.

- Written Reprimands

Internal Affairs will prepare the letter of reprimand. The letter of reprimand and a copy of the investigation will be served on the employee by Internal Affairs. The original document will be placed in the employee's discipline file.

- Suspensions

Internal Affairs will serve the employee with the appropriate documents and generate correspondence to the employee's command instructing them to carry out the suspension. The employee shall be notified by their supervisor of the beginning and ending dates of the suspension. The suspension shall be carried out in consecutive working days. The employee shall not be allowed

to work in any capacity during the period of the suspension. When the suspension has been completed, the command will notify Internal Affairs in writing. This written verification shall become part of the employee's discipline file.

NOTE: Discipline of one working day shall be administered in the form of a pay step reduction, or a one-day suspension. Discipline in excess of one day, shall be served as a suspension.

- Terminations, Demotions, Pay Step Reductions, and Disciplinary Transfers

Internal Affairs will serve the employee with the order from the Sheriff imposing discipline. Terminations and demotions will be effective immediately. Pay Step reductions and disciplinary transfers will be carried out by the Payroll and Personnel Divisions after notification by Internal Affairs the order has been served.

4.1 DISCOVERY MOTIONS (PITCHESS)

The *Pitchess* motion is a method which defendants and civil litigants use to obtain information from peace officer personnel files.

Internal Affairs acts as the "Custodian of Records," responsible for the collection and review of employees' personnel files. Internal Affairs will review the files for any material related to the motion.

Sheriff's Legal Affairs is responsible for the receiving, processing and litigation of the motions.

Notifications

Upon receipt of a valid discovery motion the involved employee will be notified by Internal Affairs within 10 days.

Disclosure

If the court orders the release of information, the following limitations should be followed:

- Information from complaints and investigations shall be limited to the names, addresses, and phone numbers of all complainants and witnesses.
- Records of complaints and investigations over five years old shall not be released.

4.2 SKELLY CONFERENCES

Refer to Department Procedure Section 3.3

4.3 CIVIL SERVICE COMMISSION

Employee Rights

Any permanent employee who is disciplined (not including written reprimands) has a right to appeal to the Civil Service Commission.

Procedure for Requesting a Hearing

At the time the employee is served with an order imposing discipline, the appeal rights and procedures shall be explained. The employee will have ten (10) calendar days to deliver a written request for a Civil Service hearing. Following this written request, the employee will have ten (10) calendar days to deliver a formal written response to the charges and/or discipline. A copy of such appeal and answer shall also be served, either personally or by mail, by the employee on the Sheriff. If the employee fails to deliver the written request or the written response within the time periods listed, they will be deemed to have waived their appeal rights.

Civil Service Hearing

The hearing shall be conducted following the Rules of the Civil Service Commission (Rule VII of the Rules of the Civil Service Commission).

The Commission will serve upon the Sheriff its ruling either affirming or modifying the Order of Discipline. The Sheriff may appeal a decision of the Civil Service Commission to the Superior Court, if desired.