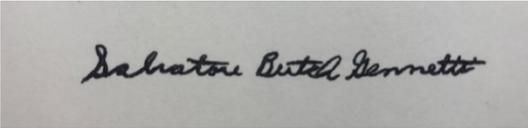


MALDEN POLICE DEPARTMENT INTERNAL AFFAIRS INVESTIGATION POLICY

<p>Massachusetts police accreditation standards referenced: 1.2.9 a; 26.1.4 a, b, c; 26.1.6; 26.1.7 a, b, c; 26.1.8; 42.1.6 b; 42.2.6; 52.1.1 b; 52.1.2; 52.1.3; 52.1.4; 52.2.1 a, b; 52.2.2; 52.2.3; 52.2.4 a, b, c; 52.2.5; 52.2.6 a, b, c, d, e; 52.2.7; 52.2.8; 55.1.3 b; 82.2.2 b; 82.2.5; 82.3.5</p>	<p>GENERAL ORDER</p> <p>-----</p> <p>POLICY NUMBER:</p> <p>007</p>	
<p><u>Effective Date:</u> 08/10/21</p> <p><u>Revised Date:</u></p> <p>Total Pages: 27</p>	<p><i>ISSUING AUTHORITY</i></p> <hr/> <p>Police Commissioner</p>  <p>Salvatore "Butch" Gennetti</p>	

I. PURPOSE:

Historically, police departments have been an instrument to maintain law and order. To be fully effective, the police need to have and maintain public trust and confidence and have their cooperation. Trust and confidence can exist only if; the public recognizes that their police department uses its enforcement procedures with integrity and according to law. By not adhering to a policy that assures public trust and confidence, barriers will develop between the police and the public. Hence, effective law enforcement within the community will become increasingly difficult.

To maintain the highest quality of police services we must have an effective and meaningful complaint procedure. With such a policy in place, citizen confidence in the integrity of police actions will increase and assure their support, cooperation and confidence in their police department. The element of police-public cooperation is vital to the department's ability to achieve its goals.

At all times, the employees of the Malden Police Department, sworn, reserve and civilian are expected to conduct themselves in a manner that will reflect favorably on the department and the City of Malden. By maintaining high standards we will be able to ensure an atmosphere of trust and cooperation between the citizens and the department. Increased cooperation will enhance our ability to achieve the articulated goals of the department.

The internal affairs function is vital for the maintenance of professional conduct within the Malden Police Department. The integrity and professionalism of the department is in direct proportion to the integrity and discipline of each of its members. The public image of the department is largely determined by the quality of the internal affairs function in responding to allegations of misconduct by the department or its members.

The Malden Police Department must provide citizens with a fair and effective avenue for redress of legitimate complaints against its officers. The Internal Affairs Unit also protects the members of the department by investigating and dismissing false and unfounded allegations of misconduct. The Internal Affairs Unit also assures that each officer receives every protection he/she is entitled to under both the State and Federal Constitutions. **26.1.6**

The Malden Police Department will not hesitate to impose disciplinary sanctions upon guilty members, including the removal and termination of any employee proven unfit for service within the department.

The Internal Affairs Investigator will be responsible for recording, registering and supervising the investigation of complaints against all employees. The Internal Affairs Investigator shall also be charged with maintaining the confidentiality of the internal affairs investigations and records.

The Internal Affairs Investigator will ensure that the integrity of the department is maintained by conducting intensive and impartial investigations and reviews in an objective, fair and judicious manner. All findings will be prepared in writing and submitted to the Chief of Police who will impose the disposition and sanction(s).

Because internal affairs investigations involve allegations against a member of the department, it is imperative that the process be lawful and confidential. Accordingly, strict confidentiality and full adherence to procedures will be maintained.

Employees of the Malden Police Department will be held to the highest standards of professional conduct. Employees who do not adhere to the standards of conduct, either through deliberate action or negligence will be subject to disciplinary action such as corrective training, counseling, or punitive action that shall be applied in a prompt and specific manner. **26.1.4 a, b, c**

The objectives of the internal affairs investigation are:

1. Protection of the public
2. Protection of the employee
3. Protection of the Department
4. Correction of procedural problems

5. The removal of unfit personnel

All alleged or suspected violations of laws, ordinances, department rules, regulations, policies, procedures and orders (whether verbal or written) must be investigated according to the procedures outlined. These include, but are not limited to:

1. Alleged violations reported to superior officers by other members of the department, either orally or in writing.
2. Alleged violations observed or suspected by superior officers.
3. Citizen complaints of alleged misconduct by members of the department that are made in person, in writing, by telephone or anonymously. **52.1.1**
4. Complaints or allegations made by detainees.

II. POLICE REFORM LEGISLATION:

On 12/31/20, Governor Charles Baker signed a comprehensive piece of legislation into law titled, *An Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth*. This historic legislation established a new nine (9) member Commission known officially as the *Massachusetts Peace Officer Standards and Training Commission* (hereinafter "POST") which was granted with very broad investigatory, enforcement and licensing powers pertaining to all sworn law enforcement officers and agencies in the Commonwealth. Of particular note, this legislation created a new statute, M.G.L. Chapter 6E, whereby certain Sections of this new law shall have a direct impact on law enforcement agencies across the state pertaining to information that is derived from the complaint investigation procedures of all police departments.

III. POLICY:

It is the policy of the Malden Police Department to accept and investigate all complaints of misconduct or wrongdoing against the department or department employees, regardless of the source of such complaint, by conducting a regulated, thorough and impartial examination of all available factual information. **52.1.1**

IV. COMPLAINT PROCEDURE: 82.2.2 b

A. Complaint Control Form:

1. A standard complaint report form shall be used to record all complaints of misconduct, mistreatment or unethical practices against department personnel, whether registered by a citizen, initiated from within the

department or forwarded by another governmental agency. This Complaint Control Form shall be located in the Officer-In Charge's (OIC) office at the Malden Police Department.

2. The following information shall be included on the complaint control form:

- a. The date and time the complaint is reported;
- b. The name, address and phone number of the complainant;
- c. The name, address, and phone number of any witness to the reported incident;
- d. The name, rank, badge number and/or the description of the employee against whom the complaint is made;
- e. The date, time and location of the alleged incident;
- f. The complainant's description of the events that resulted in the complaint;
- g. Signature of the complainant;
- h. Signature of parent or guardian if complainant is under eighteen years of age;
- i. The name, rank and signature of the department employee receiving complaint report

3. Any person requesting to make a complaint against an employee of the department shall, upon request, be given a copy of the Complaint Form so that they may complete it on their own. When Complaint Forms are given out in this manner the complainant should be instructed to return them, as soon as possible, to the Internal Affairs Unit.

4. Any person completing a Complaint Form shall be given a copy of the completed form. This may act as their receipt to verify that the complaint was received.

B. RECEIVING AND RECORDING EMPLOYEE MISCONDUCT OR COMPLAINTS OF CRIME:

1. The **Officer-in-Charge (OIC)** at the time the complaint is made shall be responsible for receiving and recording all complaints, specifically against the department or employee misconduct, or a specific crime regardless of whether they are reported in person or by telephone, mail or the internet. In some cases a complaint can be resolved to the complainant's satisfaction at the time by the Officer-in-Charge, in which case this fact should be reported **in writing** by the Officer-in-Charge to the Supervisor of Internal Affairs Investigations, the employee's Division Captain and the Chief of Police. **Failure of any employee to notify the OIC of a citizen complaint will result in punitive action. 52.1.1; 52.2.1 a; 52.2.2**

2. **ALL citizen complaints, whether resolved at the time of the complaint or not, shall be entered by the OIC into the Internal Affairs's Complaint log which will be maintained in the OIC's office.** Any complaint received online will be handled by the Patrol Commander who will update the I. A. Complaint log when the complaint is received. The complainant's name, D.O.B., address, and telephone number(s) shall be entered. The IC# (report number) shall be written on the upper right hand corner of the complaint control form. The Internal Affairs Lieutenant shall be notified of ALL complaints, including complaints resolved by the OIC.
3. The utmost courtesy and cooperation shall be given to all persons filing a complaint or inquiring about the complaint procedure. The initial contact between the complaining party and the police is the most important stage in the process. The complainant is often emotionally upset and the potential for hostility is great.
4. No person should be denied the opportunity to file a citizen complaint or report a crime. **No person should be directed to return at a later time or to call back later. Failure to give out a Complaint Form to any person making any type of complaint against a Malden Police employee shall be viewed as a violation of this policy.**
5. The Internal Affairs Lieutenant shall review each complaint form, and upon determining that an official report or investigation be conducted, shall assign an identifying number to the complaint.
6. If the substance of the employee misconduct warrants it, the officer-in-charge may place the employee on administrative leave for the remainder of his/her shift pending notification of the Internal Affairs section. However, this may only be done after consultation from the Chief of Police or an officer with the rank of Captain. The employee shall only be relieved from duty otherwise at the direction of the Chief of Police or a Captain in accordance with statutory and collective bargaining provisions.
[52.2.2, 52.2.7](#)

C. IN PERSON COMPLAINTS OF MISCONDUCT:

Reports of employee misconduct that are made **in person** should be reduced to writing and the complainant should be requested to sign the complaint form. If the complainant is a juvenile, the signature of a parent or guardian should be obtained. If the complainant refuses to sign, the officer accepting the report should make a notation that the complainant would not sign the report.

D. TELEPHONE COMPLAINTS OF CRIME OR MISCONDUCT:

When an employee misconduct complaint is received by telephone the complainant should be informed that a signed complaint is advisable. Telephone complaints about a crime or employee misconduct should not be refused or rejected because the complainant does not wish to come into the police department to report the crime or sign a complaint form. Anonymous complaints should not be rejected. All complaints should be considered on their individual merits. Care must be taken so that department employees are not subjected to unjust or malicious complaints. [52.1.1](#); [82.2.5](#)

E. COMPLAINTS OF CRIME OR MISCONDUCT RECEIVED BY U. S. MAIL OR INTERNET EMAIL: [82.2.5](#)

1. If a complaint of a crime or employee misconduct is received by U. S. Mail or internet email, the information contained shall be incorporated into an incident report for follow-up or Citizen Complaint Form for investigation and the original communication shall be attached thereto. It is the duty of the Officer-In-Charge on whose shift the complaint arrives to fill out the incident report and the Citizen Complaint Form. [52.1.4](#)
2. If the information about employee misconduct is incomplete or insufficient, the Internal Affairs Officer Investigator shall contact the complainant, if possible, and obtain the necessary information. Information about a crime in progress should be forwarded to the on duty OIC for immediate on scene response and documented. [82.2.5](#)

F. DEPARTMENTAL COMPLAINTS:

A formal complaint of employee misconduct shall be initiated by the preparation of the standard Malden Police Department [Complaint Control Form](#).

G. COMPLAINTS BY PRISONERS:

Any prisoner who alleges misconduct or mistreatment by a department employee shall be advised by the Officer-in-Charge of the station of his right to submit a complaint report form in the usual manner and **such complaints should be investigated and processed in the same manner as other citizen complaints.**

H. COMPLAINTS FROM OTHER GOVERNMENTAL AGENCIES:

When information is received or obtained from other governmental agencies alleging specific acts of misconduct against a department employee, this information shall be recorded on the standard Complaint Control Form by the Officer-In-Charge (OIC) on whose shift the complaint arrives and an investigation initiated in the usual manner.

I. OUTSIDE COMPLAINTS TO PATROL OFFICERS:

If a patrol officer is approached by a citizen regarding a complaint of alleged misconduct against an employee of the police department, the officer shall inform such person that his or her complaint should be directed to the Officer-in-Charge of the station.

J. VERIFICATION OF RECEIPT:

1. Every person making a complaint against a department employee shall receive a copy of his/her complaint to serve as a receipt verifying that such complaint has been received. **52.2.4 a**
2. When a complaint is made in person, the officer receiving the complaint will ensure that the complainant receives a copy of his/her complaint to serve as a written verification that the complaint has been received.
3. When a complaint is received over the telephone or through the mail, the **officer-in-charge of Internal Affairs** shall be responsible to ensure that the complainant is sent a copy of his/her complaint to serve as a written verification that the complaint has been received. **52.2.4 a**

V. INVESTIGATIVE PROCEDURES:

A. CATEGORIES OF COMPLAINTS / INVESTIGATIONS:

1. The department has established guidelines regarding which categories of complaints will be handled and investigated by the Internal Affairs Section and which will be handled by the employee's Commanding Officer (OIC) as a part of routine discipline.
The criteria for determining the categories of complaints to be investigated by the Internal Affairs Unit include, but are not limited to, allegations of:
52.2.1 b
 - a. Corruption;
 - b. Brutality;
 - c. Use of excessive force;
 - d. Violation of civil rights including racial profiling and/or gender profiling; **1.2.9 a**
 - e. Criminal misconduct;
 - f. Any other matter as directed by the Chief

2. **Discharge of Firearms:** The manner in which police officers use firearms is an extremely critical issue to the department, one in which the community and the courts allow little margin for error. Pursuant to departmental policy pertaining to *Use of Force*, in order to insure that proper control in this area is maintained, **ALL** reported discharges of firearms by officers of this department, whether on or off duty, will be thoroughly investigated by the Internal Affairs Unit for the purpose of determining the extent to which officers comply with departmental policy. **52.2.1 b**
3. Criteria for the assignment of an investigation to the employee's Commanding Officer (OIC) may include violations of departmental rules and regulations such as: **52.2.1 a**
 - a. Alleged rudeness;
 - b. Tardiness; and
 - c. Minor cases of insubordination
4. Reports of investigations performed by shift supervisors shall be forwarded and reviewed by the Internal Affairs Section. **52.2.1 b**

B. IMMEDIATE RESOLUTION OF A COMPLAINT:

1. In some cases a complaint can be resolved to the complainant's satisfaction at the time by the Officer-in-Charge of the station, in which case this fact should be reported in writing by the Officer-in-Charge and, if possible, acknowledged in writing by the complainant on the departmental **Complaint Control Form**.
 - a. This immediate resolution can often be accomplished if the incident is clearly **not** of a serious nature. If the complaint arises from a misunderstanding, lack of knowledge of the law or the employee's limitation of authority in a given circumstance, then the OIC should seek the easiest resolution to the problem.
 - b. Under no circumstances, however, will a justifiable complaint be refused, delayed, or otherwise rejected in this manner.

C. INVESTIGATION OF COMPLAINTS:

- a. The Officer-In-Charge of Internal Affairs investigations shall be responsible for conducting Internal Affairs investigations and shall also have the authority to report directly to the Chief of Police on any sensitive

matter which impacts on the direction and control of the department. **52.1.3**

- i. The affected employee shall be provided a written statement of the allegations against him/her unless the Chief determines that disclosure might jeopardize an investigation. **52.2.5**

NOTE: If the employee was not notified by order of the Chief, [s]he must receive written notification prior to any interrogation or administrative or criminal hearing.

- ii. The officer-in-charge of Internal Affairs investigations shall be responsible for providing the Chief of Police with status reports on the progress of the investigation every seven (7) days. These reports shall contain all pertinent information relating to the progress of the investigation.

- iii. If the substance of a complaint, if proven, would be of grave nature or is an accusation of a serious crime and immediate action is deemed necessary, the Chief, or the superior officer designated by the Chief, shall be notified forthwith in order that an investigation can be initiated without delay. **52.1.3, 52.2.2**

- iv. Before a department employee is questioned or directed to submit a report regarding a complaint, and unless the Chief determines that disclosure might jeopardize the investigation, such employee shall be issued a written statement of the allegations and in either case the employee will be advised of his/her rights and responsibilities relative to the investigation. **52.2.5**

- b. **Any Internal Affairs investigation must be commenced immediately upon receipt of the complaint and must be completed within thirty (30) days. 52.2.3**

1. If extenuating circumstances preclude completion within thirty (30) days, the officer-in-charge of Internal Affairs shall request an extension from the Chief of Police **in writing, and provide written notification to the employee (if previously notified of the complaint and investigation) and complainant of the delay. 52.2.3**

2. If the investigation is not completed within thirty days, the complainant shall be provided a progress report every thirty days until the completion of the investigation. **52.2.4 b**

- c. An internal administrative investigation may inquire into a department employee's **on-duty or off-duty conduct** if such inquiry is reasonably and

directly related to the employee's performance of duty, if such conduct affects the employee's fitness or ability to continue in the police service, or reflects discredit on the department.

- d. **CRIMINAL PROCEEDINGS**: If it is determined, generally after a preliminary investigation, that allegations against a department employee could result in a criminal prosecution, the accused employee must be granted all applicable constitutional and statutory rights.
- i. Prior to being questioned regarding alleged personal involvement in criminal activity, a department employee **shall** be given the *Miranda* warnings, including the right to have an attorney present during any such questioning, prior to custodial interrogation.
 - ii. After *Miranda* warnings have been given, any voluntary statement made thereafter could be admissible in a criminal proceeding, and it may otherwise be used for departmental disciplinary purposes.
 - iii. A department employee who is being questioned about alleged personal involvement in criminal activity which could result in a criminal prosecution cannot be discharged or otherwise penalized, solely for invoking the right to remain silent as guaranteed by the Fifth Amendment or for refusing to sign a waiver of immunity.¹ However, as discussed below, an employee may be compelled to answer questions narrowly drawn and related to his/her on or off duty conduct, and may be disciplined (including discharge) for failure to answer truthfully.
- e. **DEPARTMENTAL DISCIPLINARY ACTION**: If it is determined as a result of a preliminary investigation, that allegations made against a department employee could result in departmental disciplinary action, the accused employee is entitled to a fair and objective investigation and resolution of the charges made.
1. All department employees, when requested by the Chief, or by a superior officer designated by the Chief, must respond fully and truthfully to all questions regarding their performance of official duties or their off-duty misconduct which affects their fitness or ability to remain in the police service, and any failure to answer completely and truthfully to such inquires may be punished by appropriate disciplinary action, including dismissal from the department.²

¹ *Uniformed Sanitation Men Ass'n, Inc. v. Comm. of Sanitation of New York*, 392 U.S. 280, 88 S.Ct. 1917(1969); *Gardner v. Broderick*, 392 U.S. 273, 88 S.Ct. 1913 (1968).

² *Carney v. Springfield*, 403 Mass. 604, 532 N.E.2d 631 (1988)

- (a) **The official conducting the interrogation must, at the time of the interrogation, specify if the employee or his/her counsel or representative asks the precise repercussions (i.e., suspension, discharge, or the exact form of discipline) that will result if the officer fails to respond.³**
2. When a department employee, after declining to do so voluntarily, is ordered to submit a report or to answer questions under a threat of the penalty of discipline, that employee shall receive transactional immunity from criminal prosecution for any offenses to which the compelled testimony relates.
- (a) **The Supreme Judicial Court has held that Article 12 of the Massachusetts Declaration of Rights requires "transactional" immunity to supplant the privilege against self-incrimination when a public employee is being compelled to answer questions concerning possible criminal activities connected with his employment. Transactional immunity grants "immunity from prosecution for offenses to which compelled testimony relates."⁴**
3. If the questions specifically, directly, and narrowly relate to the employee's performance of official duties or his/her off-duty conduct which affects his/her fitness or ability to remain in the police service, and if such employee is informed that [s]he will receive transactional immunity from criminal prosecution, [s]he must answer or face disciplinary action, including dismissal from the department, for refusing to answer such questions.
4. The Chief shall secure a written grant of transactional immunity from the **Attorney General's Office**. An employee may decline to answer questions in a criminal investigation until such documentation is received.
- f. **DOUBLE JEOPARDY**: No double jeopardy exists when a department employee is found not guilty in court of criminal charges and is then found guilty of departmental charges after disciplinary hearing, as the department charges are administrative in nature and can be sustained by a "preponderance of the evidence" rather than the criminal court standard of "beyond a reasonable doubt."

³ Id.

⁴ Id.

- g. In conducting internal administrative investigations, in the absence of a requirement in a collective bargaining agreement, there is **no legal obligation for the police department to provide department employees with an opportunity to consult with an attorney before being questioned on work-related matters**;⁵ however, a request for an attorney or an employee representative to be present will be granted **if the investigation is not thereby unduly delayed.**
 - 1. Except in unusual situations, any interview or questioning should take place during the employee's regular duty hours.
 - 2. Any interview or questioning should not be prolonged without reasonable rest periods and the opportunity for meals and such other personal necessities as are reasonably required.
 - 3. A department employee shall not be improperly harassed or threatened during this period of questioning.

- h. In conducting investigations of alleged employee misconduct, all appropriate investigative techniques and methods should be employed, consistent with legal requirements and all necessary concern for the individual rights of the accused employee.
 - 1. An internal administrative investigation should be conducted with the same degree of professional competence as is devoted to a criminal investigation.
 - 2. Upon orders of the Chief of Police or his/her designee, an employee may be required to submit to a medical or laboratory examination, at the department's expense. This examination must be specifically directed and narrowly related to a particular internal affairs investigation being conducted by the department. **52.2.6 a**

- i. **IDENTIFICATION:** A police officer may also be required to be photographed and can be compelled to stand in a lineup for identification in connection with an administrative investigation, and a refusal can be the basis for an additional disciplinary charge of refusal to obey a lawful order. Such a lineup should be fairly constructed and not be unfairly suggestive and should not be used for an administrative investigation where criminal charges are contemplated. **52.2.6 b, c**

- j. **SEARCHES**

⁵ NLRB v. Weingarten, 420 U.S. 251, 95 S.Ct. 959 (1975)

1. A police officer's personal property, including his/her home, car and other property, is protected from unreasonable search and seizure under the Massachusetts Constitution, and it is possible that any evidence illegally obtained may **not** be used as evidence in an administrative proceeding.⁶
 2. Department property furnished to the officer, such as desks, lockers, or vehicles, in which it is clearly understood in advance that an officer has "no expectation of privacy," may be searched without a warrant.
- k. **FINANCIAL DISCLOSURE**: A police officer may be compelled to submit a financial disclosure statement as part of an internal affairs investigation provided such statement is material to the investigation being conducted.⁷ **52.2.6 d**
- l. Under the provisions of **M.G.L. c. 149, s. 19B**, police officers may be required to submit to a polygraph or lie detector test in connection with an internal administrative investigation if such test is conducted by a law enforcement agency in the course of a departmental investigation of criminal activity, and under such circumstances, officers may face disciplinary action for refusal.⁸ **42.2.6, 52.2.6 e**
- m. **RECORDING INTERVIEWS**: If possible, the complete interview with an employee in all internal administrative investigations should be recorded mechanically or by a qualified stenographer.
- n. **WITHDRAWN COMPLAINTS**: If during the progress of an internal investigation, the complainant indicates a desire to withdraw the complaint, every effort should be made to ensure that this decision is made voluntarily, and a signed statement to this effect should be obtained from the complainant.
1. Even though a complaint is withdrawn, a full report of the investigation to date should be prepared for the Chief and his/her approval obtained for the termination or continuation of the investigation.
 2. Any attempt, directly or indirectly, on the part of a department employee to obstruct any internal investigation or to threaten or

⁶ Board of Selectmen of Framingham v. Municipal Ct. of City of Boston, 373 Mass. 783, 369 N.E.2d 1145 (1977)

⁷ O'Brien v. Mun. Court, 10 Mass. App. Ct. 851, 407 N.E.2d 1297 (1980)

⁸ M.G.L. c. 149, s. 19B

persuade any complainant to withdraw or abandon his/her complaint, is prohibited and will be treated most severely.

VI. REPORT OF INVESTIGATION: 52.2.8

- A. After the investigation has been completed, a full written report and a “conclusion of fact” shall be prepared for submission to the Chief of Police which shall include the following: 52.1.3
1. A copy of the original complaint report;
 2. Copies of any additional statements taken from the complainant or statements obtained from witnesses;
 3. Copies of any statements made or reports submitted by the department employee under investigation;
 4. A summary of all evidence gathered;
 5. Any mitigating circumstances;
 6. **Conclusion of Fact.**
 - a. **Sustained:** The allegation has been investigated and the facts show that the allegation is true and the action taken was not consistent with department policy.
 - b. **Misconduct Not Based on Complaint:** Investigation reveals employee was guilty of misconduct not part of original complaint.
 - c. **Not Sustained:** [Inconclusive] The allegation has been investigated and there is insufficient proof to confirm or refute the allegation because of inadequate or insufficient evidence.
 - d. **Unfounded:** The allegation has been investigated and either the allegation is demonstrably false or there is no credible evidence to support it.
 - e. **Exonerated:** The allegation has been investigated and the facts indicate that the action taken was consistent with departmental policy.
 7. The Internal Affairs Investigator shall maintain a record of all complaints against the department or employees and protect the confidentiality of those records by securely maintaining them in his/her office in locked file cabinets. 42.1.6 b, 52.1.2, 82.3.5, 26.1.8

- B. Upon receipt of the report of investigation, the Chief should take further action as is necessary based upon findings in the particular case.
1. **Every person who has filed a complaint against an employee shall be notified promptly as to the final results of the investigation, personally if possible or otherwise by mail. 52.2.4 c**
 2. If a disciplinary hearing is deemed necessary, the complainant shall be notified that his testimony will be required at that time.
 3. The employee and his or her supervisor shall be notified promptly, in writing, as to the completion of the investigation.
 - (a) If the Department employee is cleared of the charges made, he or she shall be officially exonerated and the employee and his or her supervisor shall be notified in writing.

VII. CONFIDENTIALITY OF INTERNAL AFFAIRS:

1. In order to ensure that the individual rights of employees who are the subject of an Internal Affairs investigation are protected all materials relevant to those investigations and investigations against the department shall be kept strictly confidential and under lock and key by the Officer-in-Charge of Internal Affairs. **42.1.6 b, 52.1.2, 26.1.8**
2. Internal Affairs investigators should note in their reports any instances where victims or witnesses refused or were reluctant to speak with them unless they were assured that their statements would be kept confidential, at least to the extent legally allowed. **55.1.3 b**
3. No statement regarding an Internal Affairs investigation will be made or issued to the public or media unless the charges have been sustained and action has been taken or initiated against the officer or employee.
4. A copy of the completed investigation summary should be kept in a summary file in the Internal Affairs Office and will be the only source of public information about citizen complaints, other than the statistical log which may be prepared and published in the month of January by the Police Commissioner.

VIII. LIAISON WITH DISTRICT ATTORNEY:

1. Any Internal Affairs investigations which may, or does, result in criminal charges being brought against an officer shall require the District Attorney's or Attorney General's office to be appraised of the case for the purpose of advising on legal issues and ultimate prosecution, if necessary. The point of contact for this shall be the Officer-In-Charge of Internal Affairs.

XIV. INVESTIGATIVE FILES:

- A. A complete file of records on the investigation of all citizen and internal complaints shall be kept in the office of the Officer-in-Charge of Internal Affairs. These files shall contain supporting investigative information, as well as notes taken during the investigation and documentation resulting from the investigation. These files shall be treated as confidential investigative files. **26.1.7, 26.1.8, 42.1.6 b, 52.1.2**
 1. If the misconduct of the employee results in dismissal, the investigative file shall also contain the following documentation provided to the employee;
 - a. a written statement citing the reason for the dismissal; **26.1.7 a**
 - b. the effective date of the dismissal; and **26.1.7 b**
 - c. a letter from the Human Resource Director for the City of Malden outlining any external or fringe benefits available to the dismissed employee, and directing the dismissed employee to the Director of Retirement Benefits for the City of Malden for any accrued retirement benefits. **26.1.7 c**
- B. A copy of the completed investigation summary should be kept in a summary file in the office of the Chief of Police and will be the only source of public information about citizen complaints, other than the statistical log which may be prepared and published annually by the Police Commissioner.

X. ANNUAL REPORT

1. The Police Commissioner shall publish in January, the Department's Annual Report, a summary of complaint statistics (both citizen complaints and internal affairs), indicating the number of complaints filed (by type of complaint), and the outcome of the investigations undertaken (by outcome classification). In

addition, the Annual Report should outline the procedures the public may follow in filing a complaint. 52.1.1, 52.1.2

XI. DISCIPLINARY RECORDS SUBMITTED TO POST

On or before **September 30, 2021**, each law enforcement agency in the Commonwealth, including the Malden Police Department, shall provide to the *Massachusetts Peace Officer Standards and Training Commission* (“POST”), in a form to be determined by the Commission, **a comprehensive disciplinary record for each law enforcement officer currently employed by said agency**, including, but not limited to:

- (i) every complaint of which the officer was the subject of during the course of their employment with the agency; and
- (ii) all disciplinary records of the officer, including the final disposition of a complaint, if any, and any discipline imposed.
- (iii) at the conclusion of each calendar year, the Chief of Police shall submit an updated list of the criteria listed in (i) and (ii) above of each officer currently employed or separated from service for any reason directly to POST.

On **December 1, 2021**, each law enforcement agency in the Commonwealth, including the Malden Police Department, shall provide to the *Massachusetts Peace Officer Standards and Training Commission* (“POST”), in a form to be determined by the Commission, **a comprehensive disciplinary record for each law enforcement officer previously employed by said agency or a transfer or agency for which the agency is the transferee agency**, including, but not limited to:

- (i) every complaint of which the officer was the subject of during the course of their employment with the agency; and
- (ii) all disciplinary records of the officer, including the final disposition of a complaint, if any, and any discipline imposed.

XII. PUBLICLY AVAILABLE DATABASE BY POST

Pursuant to M.G.L Chapter 6E Section 13(a)(b):

The POST Commission shall maintain a **publicly available database of orders issued pursuant to section 10 of Chapter 6E on the commission's website**, including, but not limited to:

- (i) the names of all decertified officers, the date of decertification, the officer's last appointing agency and the reason for decertification;
- (ii) the names of all officers who have been suspended, the beginning and end dates of suspension, the officer's appointing agency and the reason for suspension; and
- (iii) the names of all officers ordered to undergo retraining, the date of the retraining order, the date the retraining was completed, the type of retraining ordered, and the officer's appointing agency and the reason for the retraining order.

The POST Commission shall also cooperate with the national decertification index and other states and territories to ensure officers who are decertified by the Commonwealth are not hired as law enforcement officers in other jurisdictions, including by providing information requested by those entities.

XIII. POST: DIVISION OF POLICE STANDARDS

Pursuant to **M.G.L. Chapter 6E Section 8**:

- (a) There shall be within the POST Commission an entity known as the **Division of Police Standards**. The purpose of the Division of Police Standards shall be to **investigate officer misconduct and make disciplinary recommendations to the POST Commission**.

G.L. Chapter 6E Section 8(b)(1) The head of a law enforcement agency [e.g., Malden PD] **shall transmit any complaint received by said agency within two (2) business days to the Division of Police Standards, in a form to be determined by the POST Commission;**

- provided, that the form shall include, but shall not be limited to:
 - (i) **the name and commission certification identification number of the subject officer**
 - (ii) **the date and location of the incident;**
 - (iii) **a description of circumstances of the conduct that is the subject of the complaint;**
 - (iv) **whether the complaint alleges that the officer's conduct:**
 - (A) **was biased on the basis of race, ethnicity, sex, gender identity, sexual orientation, religion, mental**

or physical disability, immigration status or socioeconomic or professional level;

- (B) was unprofessional;
- (C) involved excessive, prohibited or deadly force;
or
- (D) resulted in serious bodily injury or death; and
- (v) a copy of the original complaint submitted directly to the agency; provided, however, that the commission may establish a minimum threshold and streamlined process for the reporting or handling of minor complaints that do not involve the use of force or allegations of biased behavior.

(2) Upon completion of the internal investigation of a complaint, the head of each law enforcement agency shall immediately transmit to the Division of Police Standards an investigation report in a form to be determined by the POST Commission;

- provided, that the form shall include, but shall not be limited to:
- (i) a description of the investigation and disposition of the complaint;
- (ii) any disciplinary action recommended by internal affairs or the supervising officer; and
- (iii) if the recommended disciplinary action included retraining, suspension or termination, a recommendation by the head of the agency for disciplinary action by the commission including, retraining or suspension or revocation of the officer's certification.

(3) Upon final disposition of the complaint, the head of each agency shall immediately transmit to the Division of Police Standards a final report in a form to be determined by the POST Commission;

- provided, that the form shall include, but shall not be limited to:
- (i) any disciplinary action initially recommend by internal affairs or the supervising officer;
- (ii) the final discipline imposed and a description of the adjudicatory process; and
- (iii) if the disciplinary action recommended or imposed included retraining, suspension or termination, a recommendation by the head of the agency for disciplinary action by the commission including, retraining or suspension or revocation of the officer's certification.

(4) If an officer resigns during an agency investigation, prior to the conclusion of an agency investigation or prior to the imposition of agency discipline, up to and including termination, the head of said agency shall immediately transmit to the

division of police standards a report in a form to be determined by the commission; provided, that the form shall include, but shall not be limited to:

- (i) the officer's full employment history;
- (ii) a description of the events or complaints surrounding the resignation; and
- (iii) a recommendation by the head of the agency for disciplinary action by the commission, including retraining or suspension or revocation of the officer's certification.

(5) Notwithstanding any general or special law or collective bargaining agreement to the contrary, nothing shall limit the ability of the head of an agency to make a recommendation in their professional judgment to the commission relative to the certification status of an officer, after having followed the agency's internal affairs procedure and any appeal therefrom.

(c)(1) The Division of Police Standards shall initiate a preliminary inquiry into the conduct of a law enforcement officer if the POST Commission receives a complaint, report or other credible evidence that is deemed sufficient by the commission that the law enforcement officer:

- (i) was involved in an **officer-involved injury or death**;
- (ii) **committed a felony or misdemeanor**, whether or not the officer has been arrested, indicted, charged or convicted;
- (iii) **engaged in conduct prohibited pursuant to section 14 {Use of Force}**;
- (iv) **engaged in conduct prohibited pursuant to section 15 {Failed to Intervene}**; or
- (v) **the commission receives an affirmative recommendation by the head of an appointing agency for disciplinary action by the commission, including retraining or suspension or revocation of the officer's certification.**

(2) The Division of Police Standards may initiate a preliminary inquiry into the conduct of a law enforcement officer upon receipt of a complaint, report or other credible evidence that is deemed sufficient by the POST Commission that the law enforcement officer may have engaged in prohibited conduct.

- All proceedings and records relating to a preliminary inquiry or initial staff review used to determine whether to initiate an inquiry **shall be confidential**, except that the executive director may turn over to the attorney general, the United States Attorney or a district attorney of competent jurisdiction evidence which may be used in a criminal proceeding.

(3) The Division of Police Standards shall notify any law enforcement officer who is the subject of the preliminary inquiry, the head of their collective

bargaining unit and the head of their appointing agency of the existence of such inquiry and the general nature of the alleged violation within thirty (30) days of the commencement of the inquiry.

(d) The Division of Police Standards may audit all records related to the complaints, investigations and investigative reports of any agency related to complaints of officer misconduct or unprofessionalism, including, but not limited to, personnel records.

- The commission shall promulgate rules and regulations establishing an audit procedure; provided, however, that said rules and regulations shall not limit the ability of the division of police standards to initiate an audit at any time and for any reason.

(e) The Division of Police Standards shall create and maintain a database containing information related to an officer's:

(i) receipt of complaints and related information, including, but not limited to: the officer's appointing agency, date, a description of circumstances of the conduct that is the subject of the complaint and whether the complaint alleges that the officer's conduct:

- (A) **was biased on the basis of race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status or socioeconomic or professional level;**
- (B) **was unprofessional;**
- (C) **involved excessive, prohibited or deadly force;** or
- (D) **resulted in serious bodily injury or death;**

- (ii) allegations of **untruthfulness;**
- (iii) **failure to follow commission training requirements;**
- (iv) **decertification by the commission;**
- (v) **agency-imposed discipline;**
- (vi) **termination for cause;** and
- (vii) any other information the commission deems necessary or relevant.

(f) The Division of Police Standards shall actively monitor the database to identify patterns of unprofessional police conduct. Upon identification of a pattern of unprofessional police conduct, the Division of Police Standards may recommend the evidence in its possession for review in a preliminary inquiry.

(g) The Division of Police Standards shall be a law enforcement agency and its employees shall have such law enforcement powers as necessary to effectuate the purposes of this chapter, including the power to receive intelligence on an applicant for certification or an officer certified under this chapter and to investigate any suspected violations of law.

XIV. ***SUSPENSION*** OF AN OFFICER'S POST CERTIFICATION

Pursuant to M.G.L. Chapter 6E Section 9:

(a)(1) The POST Commission shall immediately suspend the certification of any officer who is arrested, charged or indicted for a felony.

(2) If, after a preliminary inquiry pursuant to paragraph (1) of subsection (c) of section 8, the POST Commission concludes by a preponderance of the evidence that a law enforcement officer has engaged in conduct that could constitute a felony and upon a vote to initiate an adjudicatory proceeding of said conduct, the commission SHALL immediately suspend an officer's certification.

(3) The POST Commission MAY, after a preliminary inquiry pursuant to paragraph (1) of subsection (c) of section 8, suspend the certification of any officer who is arrested, charged or indicted for a misdemeanor, if the commission determines by a preponderance of the evidence that the crime affects the fitness of the officer to serve as a law enforcement officer.

(4) The POST Commission may, pending preliminary inquiry pursuant to paragraph (1) of subsection (c) of section 8, suspend the certification of any officer if the commission determines by a preponderance of the evidence that the suspension is in the best interest of the health, safety or welfare of the public.

(5) A suspension order of the POST Commission issued pursuant to this subsection shall continue in effect until issuance of the final decision of the commission or until revoked by the commission.

(b) The POST Commission shall administratively suspend the certification of an officer who fails to complete in-service training requirements of the commission within 90 days of the deadline imposed by the commission;

- provided, however, that the commission may promulgate reasonable exemptions to this subsection, including, but not limited to, exemptions for:
 - (1) injury or physical disability;
 - (2) a leave of absence; or
 - (3) other documented hardship.
- The commission shall reinstate the certification of an officer suspended pursuant to this subsection upon completion of the in-service training requirements of the commission.

(c) The commission shall administratively suspend the certification of an officer with a duty to report information to the commission pursuant to section 8 who fails to report such information.

The commission shall reinstate the certificate of an officer suspended pursuant to this subsection upon completion of said report.

(c) A law enforcement officer whose certification is suspended by the commission pursuant to subsection (a), (b) or (c) **shall be entitled to a hearing before a commissioner within 15 days.** The terms of employment of a law enforcement officer whose certification is suspended by the commission pursuant to said subsection (a) (b) or (c) **shall continue to be subject to chapter 31 and any applicable collective bargaining agreement to which the law enforcement officer is a beneficiary.**

XV. *REVOCATION* OF AN OFFICER'S POST CERTIFICATION

Pursuant to **M.G.L. Chapter 6E Section 10:**

- (a) The commission shall, after a hearing, REVOKE an officer's certification if the commission finds by clear and convincing evidence that:**
- (i) the officer is **convicted of a felony;**
 - (ii) the certification was issued as a result of administrative error;
 - (iii) the certification was obtained through **misrepresentation or fraud;**
 - (iv) the officer **falsified any document** in order to obtain or renew certification;
 - (v) the officer has had a certification or other authorization **revoked by another jurisdiction;**
 - (vi) **the officer is terminated by their appointing agency, and**
 - o **any appeal of said termination is completed,**
 - o **based upon intentional conduct performed under the color of their office to:**
 - **obtain false confessions;**
 - **make a false arrest;**
 - **create or use falsified evidence, including false testimony or**
 - **destroying evidence to create a false impression;**
 - o **engage in conduct that would constitute a hate crime, as defined in section 32 of chapter 22C; or**

- directly or indirectly receive a reward, gift or gratuity on account of their official services;
- (vii) the officer has been convicted of submitting false timesheets in violation of section 85BB of chapter 231;
- (viii) the officer knowingly files a written police report containing a false statement or commits perjury, as defined in section 1 of chapter 268;
- (ix) the officer tampers with a record for use in an official proceeding, as defined in section 13E of chapter 268;
- (x) the officer used force in violation of section 14;
- (xi) the officer used excessive use of force resulting in death or serious bodily injury;
- (xii) the officer used a chokehold in violation of said section 14;
- (xiii) the officer engaged in conduct that would constitute a hate crime, as defined in section 32 of chapter 22C;
- (xiv) the officer engaged in the intimidation of a witness, as defined in section 13B of chapter 268;
- (xv) the officer failed to intervene, or attempt to intervene, to prevent another officer from engaging in prohibited conduct or behavior, including, but not limited to, excessive or prohibited force in violation of section 15;
- (xvi) the officer is not fit for duty as an officer and the officer is dangerous to the public, as determined by the commission.

(b) The commission may, after a hearing, suspend or revoke an officer's certification if the commission finds by clear and convincing evidence that the officer:

- (i) has been convicted of any misdemeanor;
- (ii) was biased on the basis of race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status or socioeconomic or professional level in their conduct;
- (iii) has a pattern of unprofessional police conduct that commission believes may escalate.

(iv) was suspended or terminated by their appointing agency for disciplinary reasons, and any appeal of said suspension or termination is completed; or

(v) has repeated sustained internal affairs complaints, for the same or different offenses.

(c) The commission may reinstate the certificate of an officer suspended pursuant to subsection (b) at the expiration of the suspension, if the commission finds that all conditions of the suspension were met.

(d) The commission may, after a hearing, order retraining for any officer if the commission finds substantial evidence that the officer:

- (i) failed to comply with this chapter or commission regulations, reporting requirements or training requirements;
- (ii) was biased on the basis of race, ethnicity, sex, gender identity, sexual orientation, religion, mental or physical disability, immigration status or socioeconomic or professional level in their conduct;
- (iii) used excessive force;
- (iv) failed to respond an incident according to established procedure;
- (v) has a pattern of unprofessional police conduct;
- (vi) was untruthful, except for a statement or action that mandates revocation pursuant to subsection (a);
- (vii) was suspended or terminated by their appointing agency for disciplinary reasons, except those reasons which mandate revocation pursuant to said subsection (a);
- (viii) fails to intervene to prevent another officer from engaging in prohibited conduct or behavior, except a failure to intervene in conduct that mandates revocation pursuant to said subsection (a); or
- (ix) would benefit in their job performance if retrained.

(e) The commission shall immediately notify the officer and the head of the appointing agency of the officer who is decertified, suspended or ordered to undergo retraining of the order.

(f) The commission shall conduct preliminary inquiries, revocation and suspension proceedings and hearings, and promulgate regulations for such proceedings and hearings, pursuant to sections 1, 8 and 10 to 14, inclusive, of chapter 30A. Any decision of the commission relative to a preliminary inquiry, revocation and suspension proceeding shall be appealable pursuant to chapter 30A. No adverse action taken against a certification by the commission pursuant to this section shall be appealable to the civil service commission established under chapter 31. No employment action taken by an appointing authority that results from a revocation by the commission pursuant to subsection (a) shall be appealable to the civil service commission established under chapter 31.

(g) The commission shall publish any revocation order and findings. The commission shall provide all revocation information to the national decertification index. No officer may apply for certification after that officer's certification has been revoked pursuant to this section.

(h) **An appointing agency shall complete an internal affairs investigation into officer misconduct and issue a final disposition within one year of receiving a complaint or notice from the commission of the complaint being filed.**

- **The commission may, upon a showing of good cause, extend the time to complete the investigation. The commission shall not institute a revocation or suspension hearing pursuant to this section until the officer's appointing agency has issued a final disposition or 1 year has elapsed since the incident was reported to the commission, whichever is sooner.**
- If the officer notifies the commission that the officer wishes to suspend such hearing pending an appeal or arbitration of the appointing agency's final disposition, the commission shall suspend the hearing. Any such suspension of the hearing shall not exceed 1 year from the officer's notice to the commission; provided, however, that at any time during which the hearing is so suspended and upon a showing of good cause by the officer, the commission shall further suspend the hearing for a period of not less than 6 months and not more than the commission determines is reasonable; provided, however, that any delay in instituting a revocation or suspension hearing shall not exceed 1 year from the officer's request. If the officer notifies the commission that the officer wishes to suspend such hearing pending the resolution of criminal charges, the commission shall suspend the hearing; provided, however, that the officer's certification shall be suspended during the pendency of any delay in such hearing. This subsection shall not impact the commission's authority to suspend a certification pursuant to section 9.

XVI. DECERTIFIED OFFICERS NOT ELIGIBLE FOR EMPLOYMENT

Pursuant to **G.L. Chapter 6E Section 11**, neither any agency, nor a sheriff, nor the executive office of public safety nor any entity thereunder shall employ a decertified officer in any capacity, including, but not limited to, as a consultant or independent contractor.

XVII. PROTECTIONS FOR TESTIFYING BEFORE POST

Pursuant to **G.L. Chapter 6E Section 12**, no officer or employee of the Commonwealth or of any county, city, town or district shall discharge an officer or employee, change their official rank, grade or compensation, deny a promotion or take any other adverse action against an officer or employee or threaten to take any such action for providing information to the commission or testifying in any commission proceeding.

XVIII. CONCLUSION:

Every complaint received against the Malden Police Department or an employee of the Department shall be considered a serious matter. Every superior officer assigned to investigate such matters shall be directly responsible and accountable for the appropriate handling and disposition of these investigations. A proper and sound internal affairs investigation policy helps maintain our department's integrity and community support.

52.1.1, 52.2.1 a, b